

THE GENERAL STATUTES OF NORTH CAROLINA

1975 SUPPLEMENT

**Completely Annotated, under the Supervision of the
Department of Justice, by the Editorial Staff
of the Publishers**

UNDER THE DIRECTION OF

W. M. WILLSON, J. H. VAUGHAN AND SYLVIA FAULKNER

Volume 1C

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Preface

This Supplement to Replacement Volume 1C contains the general laws of a permanent nature enacted at the 1975 Session of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D and the 1975 Cumulative Supplements thereto.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1975 Session of the General Assembly affecting Chapters 15 through 20 of the General Statutes.

Annotations:

Sources of the annotations:

North Carolina Reports volumes 285 (p. 598)-288 (p. 121).

North Carolina Court of Appeals Reports volumes 22 (p. 509)-26 (p. 535).

Federal Reporter 2nd Series volumes 498 (p. 913)-518 (p. 32).

Federal Supplement volumes 377 (p. 193)-396 (p. 256).

Federal Rules Decisions volumes 63 (p. 230)-67 (p. 193).

United States Reports volumes 415 (p. 605)-419 (p. 984).

Supreme Court Reporter volume 95 (p. 2683).

Opinions of the Attorney General.

Scope of Volume

Statutes

Permanent portions of the general laws enacted at the 1915 Session of the General Assembly affecting chapters 12 through 23 of the General Statutes.

Annotations

Source of the annotations

North Carolina Reports volumes 285 (p. 288-289) (p. 181)
North Carolina Court of Appeals Reports volumes 22 (p. 288-289) (p. 285)
North Carolina Reports and Cases volumes 285 (p. 288-289) (p. 285)
North Carolina Reports volumes 271 (p. 188-288) (p. 285)
North Carolina Reports volumes 25 (p. 288-289) (p. 181)
North Carolina Reports volumes 23 (p. 288-289) (p. 285)
North Carolina Reports volumes 22 (p. 288-289) (p. 285)
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The General Statutes of North Carolina 1975 Supplement

VOLUME 1C

Chapter 15.

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15-104.1. [Repealed.]

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15-223. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor.

Editor's Note. —

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973

act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 1.

General Provisions.

§§ 15-2, 15-3: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-9: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-10. Speedy trial or discharge on commitment for felony.

This section is for the protection, etc. —

In accord with original. See *Farrington v. North Carolina*, 391 F. Supp. 714 (M.D.N.C. 1975).

And not that he go quit, etc. —

This section does not bar further prosecution. *Farrington v. North Carolina*, 391 F. Supp. 714 (M.D.N.C. 1975).

§ 15-10.2. Mandatory disposition of detainees — request for final disposition of charges; continuance; information to be furnished prisoner.

Prisoner Must Follow, etc. —

An inmate must follow the section's requirements. He must send by registered mail a demand to the solicitor, and sending it to the clerk of the superior court unregistered is insufficient, when the district attorney does not know of the demand. *Farrington v. North Carolina*, 391 F. Supp. 714 (M.D.N.C. 1975).

Effect of Detainer in File. — The presence of a detainer in a prisoner's file jeopardizes his chances for parole, proper good behavior credits and work release. *Farrington v. North Carolina*, 391 F. Supp. 714 (M.D.N.C. 1975).

Applied in *State v. Watts*, 25 N.C. App. 104, 212 S.E.2d 224 (1975).

ARTICLE 3.

Warrants.

§§ 15-18 to 15-24: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 4.

Search Warrants.

§ 15-25: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§§ 15-26 to 15-27.1: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 5.

Peace Warrants.

§§ 15-28 to 15-38: Repealed by Session Laws 1973, c. 1286, ss. 11, 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 6.

Arrest.

§§ 15-39 to 15-42: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§§ 15-44 to 15-47: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 7.

Fugitives from Justice.

§ 15-49: Repealed by Session Laws 1975, c. 166, s. 26, effective September 1, 1975.

Editor's Note. — See Editor's note following the analysis to Chapter 15A.

§§ 15-50 to 15-52: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 8.

Extradition.

§§ 15-55 to 15-84: Transferred to §§ 15A-721 to 15A-750 by Session Laws 1973, c. 1286, s. 16, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 9.

Preliminary Examination.

§§ 15-85 to 15-101: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 10.

Bail.

§§ 15-102, 15-103: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-103.2: Repealed by Session Laws 1975, c. 166, s. 26, effective September 1, 1975.

Editor's Note. — See Editor's note following the analysis to Chapter 15A.

§ 15-104: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-104.1: Repealed by Session Laws 1975, c. 166, s. 26, effective September 1, 1975.

Editor's Note. — See Editor's note following the analysis to Chapter 15A.

§§ 15-105 to 15-107: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-107.1: Repealed by Session Laws 1975, c. 166, s. 26, effective September 1, 1975.

Editor's Note. — See Editor's note following the analysis to Chapter 15A.

§§ 15-108, 15-109: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 12.

Commitment to Prison.

§ 15-125: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-126. Commitment to county jail. — All persons committed to prison before conviction shall be committed to the jail of the county in which the examination is had, or to that of the county in which the offense is charged to have been committed: Provided, if the jails of these counties are unsafe, or injurious to the health of prisoners, the committing magistrate may commit to the jail of any other convenient county. And every sheriff or jailer to whose jail any person shall be committed by any court or magistrate of competent jurisdiction shall receive such prisoner and give a receipt for him, and be bound for his safekeeping as prescribed by law. (1868-9, c. 178, subch. 2, s. 33; Code, s. 1164; Rev., s. 3231; C. S., s. 4598; 1973, c. 1286, s. 26; 1975, c. 166, s. 25.)

Editor's Note. — Session Laws 1975, c. 166, s. 25, effective Sept. 1, 1975, reinstated this section, which was repealed by Session Laws 1973, c. 1286, s. 26, effective Sept. 1, 1975.

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973

act effective Sept. 1, 1975, rather than July 1, 1975. See Editor's note following the analysis to Chapter 15A.

§ 15-127: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 13.

Venue.

§ 15-128: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-129. In offenses on waters dividing counties. — When any offense is committed on any water, or watercourse whether at high or low water, which water or watercourse, or the sides or shores thereof, divides counties, such offense may be dealt with, inquired of, tried and determined, and punished at the discretion of the court, in either of the two counties which may be nearest to the place where the offense was committed. (R. C., c. 35, s. 24; Code, s. 1193; Rev., s. 3234; C. S., s. 4601; 1973, c. 1286, s. 26; 1975, c. 166, s. 25.)

Editor's Note. — Session Laws 1975, c. 166, s. 25, effective Sept. 1, 1975, reinstated this section, which was repealed by Session Laws 1973, c. 1286, s. 26, effective Sept. 1, 1975.

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973

act effective Sept. 1, 1975, rather than July 1, 1975. See Editor's note following the analysis to Chapter 15A.

§§ 15-134 to 15-136: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as

to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 14.

Presentment.

§§ 15-137 to 15-139: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as

to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 15.

Indictment.

§§ 15-140 to 15-143: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as

to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-144. Essentials of bill for homicide.

Killing with Malice, etc. —

In accord with 1st paragraph in original. See *State v. McLaughlin*, 286 N.C. 597, 213 S.E.2d 238 (1975).

Bill of Particulars. —

In accord with original. See *State v. McLaughlin*, 286 N.C. 597, 213 S.E.2d 238 (1975).

Indictment Sufficient to Charge Conspiracy to Murder. — See *State v. Graham*, 24 N.C. App. 591, 211 S.E.2d 805 (1975).

Applied in *State v. Boyd*, 287 N.C. 131, 214 S.E.2d 14 (1975); *State v. Woodson*, 287 N.C. 578, 215 S.E.2d 607 (1975).

Cited in State v. Ward, 286 N.C. 304, 210 S.E.2d 407 (1974); State v. Peterson, 24 N.C. App. 404, 210 S.E.2d 883 (1975); State v. White,

286 N.C. 395, 211 S.E.2d 445 (1975); State v. Monk, 286 N.C. 509, 212 S.E.2d 125 (1975).

§ 15-147: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as

to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-151. Intent to defraud; larceny and receiving.

In General. —

A bill of indictment charging the uttering of a forged check which charges all the essential

elements of the offense but not specifying to whom checks were uttered is sufficient. State v. McAllister, 287 N.C. 178, 214 S.E.2d 75 (1975).

§ 15-152: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as

to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-153. Bill or warrant not quashed for informality.

I. NATURE AND PURPOSE.

Purpose of Section. —

The authorities are in unison that an indictment, whether at common law or under a statute, to be good must allege lucidly and accurately all the essential elements of the offense endeavored to be charged. The purpose of such constitutional provisions is: (1) such certainty in the statement of the accusation as will identify the offense with which the accused is sought to be charged; (2) to protect the accused from being twice put in jeopardy for the same offense; (3) to enable the accused to prepare for trial, and (4) to enable the court, on conviction or plea of nolo contendere or guilty, to pronounce sentence according to the rights of the case. State v. Arnold, 285 N.C. 751, 208 S.E.2d 646 (1974).

Applied in State v. McAllister, 287 N.C. 178, 214 S.E.2d 75 (1975).

II. GENERAL EFFECT.

Plain, Intelligible and Explicit, etc. —

In accord with 10th paragraph in original. See State v. Arnold, 285 N.C. 751, 208 S.E.2d 646 (1974).

Where the bills of indictment contained allegations sufficient to set forth fully and clearly all essential elements of the offenses

charged, denial of defendant's motion to quash on the ground that the bills were "too vague and insufficient, too broad and general" was proper. State v. Coleman, 24 N.C. App. 530, 211 S.E.2d 542 (1975).

Identity of Accused. — For an indictment to be valid, the name of the accused must be alleged in a manner sufficient to identify him with certainty. State v. Bagnard, 24 N.C. App. 566, 211 S.E.2d 471 (1975).

Bill of indictment identifying the accused in the body thereof as "John Doe AKA 'Varne'" was insufficient to charge a defendant named "Vaughn Bagnard" with any offense. State v. Bagnard, 24 N.C. App. 566, 211 S.E.2d 471 (1975).

III. DEFECTS CURED.

B. Omissions and Mistakes.

Foreman's Failure to Sign Bill. — The report of the grand jury, signed by the foreman, in which was listed the bill against defendant as having been returned a true bill charging a noncapital felony, rendered the foreman's failure to sign the bill itself amendable, and defendant's motion to quash the indictment was properly denied. State v. Spinks, 24 N.C. App. 548, 211 S.E.2d 476 (1975).

§ 15-154: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-155. Defects which do not vitiate.

The words "with force and arms," etc. —

In accord with original. See *State v. Coleman*, 24 N.C. App. 530, 211 S.E.2d 542 (1975).

Variance. —

Where bill of indictment charges that defendant escaped while lawfully confined in the North Carolina State Prison System in the lawful custody of the North Carolina Department of Correction, and the evidence shows he escaped while assigned by an official of the Department of Correction to work under an employee of the State Highway Commission,

the variance is not fatal. *State v. Coleman*, 24 N.C. App. 530, 211 S.E.2d 542 (1975).

Where a larceny indictment describes the stolen property as "a 1970 Plymouth, Serial # PM14360F239110, the personal property of George Edison Biggs," and the evidence shows the taking by defendant of a 1970 Plymouth which was owned by George Edison Biggs but there is no evidence as to the serial number, the variance is not fatal. *State v. Coleman*, 24 N.C. App. 530, 211 S.E.2d 542 (1975).

ARTICLE 15B.

Pretrial Examination of Witnesses and Exhibits of the State.

§§ 15-155.4, 15-155.5: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 16.

Trial before Justice.

§§ 15-156 to 15-158: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-159. **Commitment after judgment.** — The commitment to the county prison shall set forth —

- (1) The name of the guilty person.
- (2) The nature of the offense of which he is convicted and the date of the trial.
- (3) The period of his imprisonment.
- (4) It shall be directed to the sheriff of the county, or to the keeper of the county jail, and shall direct him to keep the prisoner for the time stated, or until discharged by law.
- (5) The name of the constable or other officer required to execute it.
- (6) It shall be signed by the justice and be dated. (1868-9, c. 178, subch. 4, s. 17; Code, s. 1238; Rev., s. 3259; C. S., s. 4629; 1973, c. 1286, s. 26; 1975, c. 166, s. 25.)

Editor's Note. —

Session Laws 1975, c. 166, s. 25, effective Sept. 1, 1975, reinstated this section, which was repealed by Session Laws 1973, c. 1286, s. 26, effective Sept. 1, 1975.

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975. See Editor's note following the analysis to Chapter 15A.

§§ 15-160, 15-161: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as

to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 17.

Trial in Superior Court.

§ 15-162: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as

to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-169. Conviction of assault, when included in charge.**When Section Applicable. —**

In accord with 1st paragraph in original. See *State v. Lampkins*, 286 N.C. 497, 212 S.E.2d 106 (1975).

Same — Murder. —

In a rape case, the trial court did not err in failing to submit the lesser included offenses of assault with intent to commit rape and assault on a female where all the State's evidence tended to show commission of rape and the defendant's evidence was that he had never had intercourse with the prosecutrix nor did he touch her in a manner constituting an assault. *State v. Lampkins*, 286 N.C. 497, 212 S.E.2d 106 (1975).

The necessity for instructing the jury, etc.

In accord with 1st paragraph in original. See *State v. Lampkins*, 286 N.C. 497, 212 S.E.2d 106 (1975).

The trial court is not required to charge the jury upon the question of the defendant's guilt of lesser degrees of the crime charged in the indictment when there is no evidence to sustain a verdict of defendant's guilt of such lesser degrees. *State v. Lampkins*, 286 N.C. 497, 212 S.E.2d 106 (1975).

§ 15-170. Conviction for a less degree or an attempt.**Application of Section. —**

In accord with 3rd paragraph in original. See *State v. Lampkins*, 286 N.C. 497, 212 S.E.2d 106 (1975).

In accord with 4th paragraph in original. See *State v. Arnold*, 285 N.C. 751, 208 S.E.2d 646 (1974); *State v. Aiken*, 286 N.C. 202, 209 S.E.2d 763 (1974).

Crime of Accessory Included. —

The crime of accessory before the fact is a lesser offense of a felony charged in the bill of indictment, and a defendant may be convicted of accessory before the fact on an indictment charging the principal crime. *State v. Buie*, 26 N.C. App. 151, 215 S.E.2d 401 (1975).

Indictment for Attempt, etc. —

An attempt to commit a crime is an indictable

offense and as a matter of form and on proper evidence, in this jurisdiction, a conviction may be sustained on a bill of indictment making a specific charge, or one which charges a completed offense. *State v. Arnold*, 285 N.C. 751, 208 S.E.2d 646 (1974).

Defendant Entitled to Complete Charge. —

Where there is evidence of defendant's guilt of a lesser degree of the crime charged in the indictment, the court must submit defendant's guilt of the lesser included offense to the jury, and if the court fails to do so, the error is not cured by a verdict convicting defendant of the offense charged. *State v. Putnam*, 24 N.C. App. 570, 211 S.E.2d 493 (1975).

Uncontradicted Evidence Showing, etc. —

Where the State's evidence is positive as to each and every element of the crime charged and there is no conflicting evidence relating to any element of the charged crime, the court is not required to submit an issue as to defendant's guilt or innocence of a lesser included offense. *State v. Owen*, 24 N.C. App. 598, 212 S.E.2d 830 (1975).

In Prosecution for Robbery. —

In accord with 3rd paragraph in original. See *State v. Black*, 286 N.C. 191, 209 S.E.2d 458 (1974).

Where the evidence necessarily restricted the jury to the return of one of two verdicts; namely, a verdict of guilty of robbery with a dangerous weapon, or a verdict of not guilty, the trial court did not err by failing to instruct the jury that it might acquit the defendant of the crime of robbery with a dangerous weapon as charged in the bill of indictment and convict him of the lesser offense of common-law robbery. *State v. Black*, 286 N.C. 191, 209 S.E.2d 458 (1974).

In Prosecution for Rape. —

In a rape case, the trial court did not err in failing to submit the lesser included offenses of

assault with intent to commit rape and assault on a female where all the State's evidence tended to show commission of rape and the defendant's evidence was that he had never had intercourse with the prosecutrix nor did he touch her in a manner constituting an assault. *State v. Lampkins*, 286 N.C. 497, 212 S.E.2d 106 (1975).

Necessity for instructing jury, etc. —

In accord with 1st paragraph in original. See *State v. Black*, 286 N.C. 191, 209 S.E.2d 458 (1974); *State v. Lampkins*, 286 N.C. 497, 212 S.E.2d 106 (1975); *State v. Putnam*, 24 N.C. App. 570, 211 S.E.2d 493 (1975).

A court is not required to submit a lesser included offense to the jury when there is no evidence to support such a charge. *State v. Carriker*, 24 N.C. App. 91, 210 S.E.2d 98 (1974), cert. granted, 286 N.C. 417, 211 S.E.2d 797 (1975).

In Prosecution for Arson. — The felony created by § 14-67 is a lesser included offense of the crime of arson. *State v. Arnold*, 285 N.C. 751, 208 S.E.2d 646 (1974).

§ 15-173. Demurrer to the evidence.**On motion to nonsuit, the court is required, etc. —**

In considering a motion for judgment as of nonsuit, the court is not concerned with the weight of the testimony, or with its truth or falsity, but only with the question of whether there is sufficient evidence for the jury to find that the offense charged has been committed and that defendant committed it. *State v. Hines*, 286 N.C. 377, 211 S.E.2d 201 (1975).

Whether Competent or Incompetent. —

Upon the consideration of a motion for judgment of nonsuit, evidence for the State, even though improperly admitted, is taken into account. *State v. Williams*, 286 N.C. 422, 212 S.E.2d 113 (1975).

Effect of Defendant Introducing Testimony, etc. —

Defendant introduced evidence, and by doing so waived his right to except on appeal to the denial of his motion for nonsuit at the close of the State's evidence. *State v. Rigsbee*, 285 N.C. 708, 208 S.E.2d 656 (1974); *State v. Logan*, 25 N.C. App. 49, 212 S.E.2d 236 (1975).

Defendant's exception to the denial of his motion for nonsuit made at the close of all the evidence raises the question of the sufficiency of all the evidence to go to the jury. *State v. Rigsbee*, 285 N.C. 708, 208 S.E.2d 656 (1974).

When Motion Denied. —

A motion for judgment of nonsuit is properly denied if there is any competent evidence to support the allegations contained in the bill of

indictment; and all the evidence which tends to sustain those allegations must be considered in the light most favorable to the State and the State is entitled to every reasonable inference to be drawn therefrom. *State v. Bell*, 285 N.C. 746, 208 S.E.2d 506 (1974).

If there is substantial evidence, whether direct, circumstantial, or both, of all material elements of the offense charged, then the motion for nonsuit must be denied and it is then for the jury to determine whether the evidence establishes guilt beyond a reasonable doubt. *State v. Coble*, 24 N.C. App. 79, 210 S.E.2d 118 (1974).

Sufficiency of Evidence. —

In accord with 6th paragraph in original. See *State v. McKinney*, 24 N.C. App. 259, 210 S.E.2d 450 (1974), cert. granted, 286 N.C. 418, 211 S.E.2d 799 (1975).

In accord with 25th paragraph in original. See *State v. Mull*, 24 N.C. App. 502, 211 S.E.2d 515 (1975).

In accord with 29th paragraph in original. See *State v. Rigsbee*, 285 N.C. 708, 208 S.E.2d 656 (1974); *State v. McKinney*, 24 N.C. App. 259, 210 S.E.2d 450 (1974), cert. granted, 286 N.C. 418, 211 S.E.2d 799 (1975).

In accord with 30th paragraph in original. See *State v. Coble*, 24 N.C. App. 79, 210 S.E.2d 118 (1974).

In accord with 33rd paragraph in original. See *State v. McCall*, 286 N.C. 472, 212 S.E.2d 132 (1975).

In accord with 40th paragraph in original. See *State v. McKinney*, 24 N.C. App. 259, 210 S.E.2d 450 (1974), cert. granted, 286 N.C. 418, 211 S.E.2d 799 (1975).

All of the evidence favorable to the State is considered, and defendant's evidence relating to matters of defense or defendant's evidence in conflict with that of the State is not considered. *State v. McKinney*, 24 N.C. App. 259, 210 S.E.2d 450 (1974), cert. granted, 286 N.C. 418, 211 S.E.2d 799 (1975).

A motion to nonsuit in a criminal case requires consideration of the evidence in the light most favorable to the State, and the State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom. *State v. McKinney*, 288 N.C. 113, 215 S.E.2d 578 (1975).

To withstand a motion for judgment as of nonsuit there must be substantial evidence of all material elements of the offense charged. *State v. McKinney*, 288 N.C. 113, 215 S.E.2d 578 (1975).

Whether the State has offered substantial evidence presents a question of law for the trial court. *State v. McKinney*, 24 N.C. App. 259, 210 S.E.2d 450 (1974), cert. granted, 286 N.C. 418, 211 S.E.2d 799 (1975).

On motion for nonsuit, only the evidence favorable to the State is considered, and contradictions and discrepancies, even in the State's evidence, are for the jury and do not warrant nonsuit. *State v. Rigsbee*, 285 N.C. 708, 208 S.E.2d 656 (1974).

In passing upon a motion for judgment as of nonsuit, the trial judge must consider all the evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn from the evidence and considering so much of defendant's evidence as may be favorable to the State. *State v. Hines*, 286 N.C. 377, 211 S.E.2d 201 (1975).

Upon a motion for judgment of nonsuit, the evidence for the State is taken to be true and the State is entitled to every reasonable inference which may be drawn therefrom, contradictions and discrepancies in the State's evidence are disregarded and the evidence of the defendant in conflict with that of the State is not taken into consideration. *State v. Lampkins*, 286 N.C. 497, 212 S.E.2d 106 (1975); *State v. Williams*, 286 N.C. 422, 212 S.E.2d 113 (1975).

Same — Circumstantial Evidence. —

In accord with 5th paragraph in original. See *State v. Solomon*, 24 N.C. App. 527, 211 S.E.2d 478 (1975).

In accord with 7th paragraph in original. See *State v. McCall*, 286 N.C. 472, 212 S.E.2d 132 (1975).

Motion challenging the sufficiency of circumstantial evidence to go to the jury should be denied if there is evidence, considered in the light most favorable to the State, from which the

jury could find that a crime has been committed and that defendant committed it. *State v. Solomon*, 24 N.C. App. 527, 211 S.E.2d 478 (1975).

Nonsuit should be denied when there is sufficient evidence, direct, circumstantial or both, from which the jury could find that the offense charged has been committed and that defendant committed it. *State v. Mull*, 24 N.C. App. 502, 211 S.E.2d 515 (1975).

Same — Prosecution for Homicide. —

The evidence was sufficient to be submitted to the jury in a second degree murder prosecution where it tended to show that the defendant and the deceased were imprisoned in the same prison unit; that a prison guard saw them arguing and broke them up; that later the guard saw defendant approach deceased who was lying on his bunk and make a striking movement toward the deceased's body; that although the guard saw no knife or other weapon in defendant's hand, a small knife was later discovered in a heater and deceased had died from a stab wound in the chest. *State v. Mull*, 24 N.C. App. 502, 211 S.E.2d 515 (1975).

Same — Rape. —

Where the prosecuting witness testified that she did not consent to any one of the defendants having sexual relations with her and that each of the acts of intercourse was against her will, because, she stated, that their strength was greater than hers and that she feared for her life, there was substantial evidence of all material elements of the crime of rape as to each defendant, and the trial judge properly overruled the motions for nonsuit. *State v. Hines*, 286 N.C. 377, 211 S.E.2d 201 (1975).

Same — Breaking and Entering, etc. —

The court properly denied the motion for nonsuit where the State, introduced substantial evidence of each element of the offense of breaking or entering the building as charged in the indictment and that defendant was one of the persons who committed the offense, therefore the question of his guilt or innocence was properly submitted to the jury. *State v. Burch*, 24 N.C. App. 514, 211 S.E.2d 511 (1975).

Same — Conspiracy. —

The State's evidence was sufficient to be submitted to the jury on the issue of defendant's guilt of conspiracy to commit murder where there was evidence that defendant had discussed with another the murder and the means by which it might be accomplished; that defendant sent the coconspirator a picture of the victim for identification purposes; that defendant sent sums of money to the coconspirator; and that after an unsuccessful attempt was made upon the victim's life, defendant had stated to a friend who had introduced her to the coconspirator that the coconspirator knew somebody who would "finish the job." *State v. Graham*, 24 N.C. App. 591, 211 S.E.2d 805 (1975).

Judgment of Nonsuit Has Effect, etc. —

The motion for judgment of nonsuit and the motion for a directed verdict of not guilty have the same legal effect. *State v. Williams*, 286 N.C. 422, 212 S.E.2d 113 (1975).

Arrest of Judgment and Judgment of Nonsuit. — An order for arrest of judgment is based upon the insufficiency of the indictment or other defect appearing on the face of the record and it is appealable by the State; a judgment of nonsuit, on the other hand, has the

force and effect of verdict of not guilty, and the State may not appeal. *State v. Pinkney*, 25 N.C. App. 316, 212 S.E.2d 907 (1975).

Under § 15-173.1 the sufficiency of the evidence of the State in a criminal case is reviewable upon an appeal without regard to whether a motion has been made pursuant to this section. *State v. Rigsbee*, 285 N.C. 708, 208 S.E.2d 656 (1974).

Applied in *State v. Wallace*, 25 N.C. App. 360, 213 S.E.2d 420 (1975).

§ 15-173.1. Review of sufficiency of evidence on appeal.

Applied in *State v. Rigsbee*, 285 N.C. 708, 208 S.E.2d 656 (1974); *State v. McKinney*, 24 N.C. App. 259, 210 S.E.2d 450 (1974), cert. granted, 211 S.E.2d 799 (1975); *State v. Logan*, 25 N.C.

App. 49, 212 S.E.2d 236 (1975); *State v. Laney*, 26 N.C. App. 513, 216 S.E.2d 389 (1975); *State v. McKinney*, 288 N.C. 113, 215 S.E.2d 578 (1975).

§ 15-174. New trial to defendant.

Failure to Enter Formal Arraignment and Plea. — Where the record was silent as to arraignment and plea with the exception that the court in its charge to the jury stated that defendant had entered a plea of not guilty to the charge, despite the fact that the record was replete with indications that defendant was well aware of and understood the charges against him, that the jury was aware of the charges and understood them, that the entry of a formal arraignment and plea of not guilty would not have affected the outcome of the case, and

further that objection to the procedure appeared for the first time on appeal, defendant was granted a new trial. *State v. McCotter*, 24 N.C. App. 76, 210 S.E.2d 91 (1974).

Granting of New Trial Is in Discretion, etc. —

A motion for new trial on the grounds of newly discovered evidence is addressed to the sound discretion of the trial court and is not subject to review absent a showing of an abuse of discretion. *State v. Hammock*, 25 N.C. App. 97, 212 S.E.2d 180 (1975).

§ 15-175: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as

to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 17A.***Informing Jury in Case Involving Death Penalty.***

§ 15-176.3. Informing and questioning potential jurors on consequences of guilty verdict.

Applied in *State v. Boyd*, 287 N.C. 131, 214 S.E.2d 14 (1975).

Stated in *State v. Bell*, 287 N.C. 248, 214 S.E.2d 53 (1975).

§ 15-176.4. Instruction to jury on consequences of guilty verdict.

Instruction in Absence of Request. — It is not error to give an instruction as to the death penalty even in the absence of a request. *State v. Boyd*, 287 N.C. 131, 214 S.E.2d 14 (1975).

§ 15-176.5. Argument to jury on consequences of guilty verdict.

Stated in *State v. Bell*, 287 N.C. 248, 214 S.E.2d 53 (1975).

ARTICLE 17B.***Informing Jury of Possible Punishment upon Conviction.*****§ 15-176.9. Loss of motor vehicle driver's license.**

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 18.***Appeal.*****§ 15-179. When State may appeal.**

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

Arrest of Judgment and Judgment of Nonsuit. — An order for arrest of judgment is based upon the insufficiency of the indictment or other defect appearing on the face of the

record and it is appealable by the State; a judgment of nonsuit, on the other hand, has the force and effect of verdict of not guilty, and the State may not appeal. *State v. Pinkney*, 25 N.C. App. 316, 212 S.E.2d 907 (1975).

Applied in *State v. Greene*, 26 N.C. App. 342, 215 S.E.2d 629 (1975); *State v. Alston*, 26 N.C. App. 418, 216 S.E.2d 416 (1975).

§ 15-180. Appeal by defendant to appellate division. — In all cases of conviction in the superior court for any criminal offense, the defendant shall have the right to appeal, on giving adequate security to abide the sentence, judgment or decree of the appellate division. The manner and time for taking appeal are as provided in G.S. 15-180.3. The procedure for perfecting and prosecuting the appeal after its taking is as provided by the rules of appellate procedure. (1818, c. 962, s. 4, P. R.; R. C., c. 4, s. 21; Code, s. 1234; Rev., s. 3277; C. S., s. 4650; 1969, c. 44, s. 36; 1975, c. 391, s. 5.)

Editor's Note. — The 1975 amendment deleted "and the appeal shall be perfected and the case for the appellate division settled, as provided in civil actions" at the end of the first sentence and added the second and third sentences.

Session Laws 1975, c. 391, s. 16, provides: "This act shall be in effect on and after July 1,

1975, in respect of all appeals from the courts of the trial divisions, the Utilities Commission, the Industrial Commission, and the Commissioner of Insurance to the courts of the appellate division which shall be taken on and after the effective date. This act shall not apply to appeals taken prior to its effective date."

§ 15-180.2. Appeal after plea of guilty or nolo contendere. — Notwithstanding any other provision of law, when a defendant pleads guilty or nolo contendere to a charge pending in the superior court division of the General Court of Justice, there shall be no right of appeal to the appellate division of such plea of guilty or nolo contendere but such defendant shall have the right to petition the appellate division for the issuance of a writ of certiorari to review the proceedings in the superior court division of the General Court of Justice. In the event the sentence imposed is life imprisonment the petition shall be directed to the Supreme Court; in all other cases it shall be directed to the Court of Appeals.

Should a defendant, who is determined to be an indigent as provided in G.S. 7A-450, exercise his right to petition the appellate division for the issuance of a writ of certiorari, the presiding superior court judge may, in his discretion, order the preparation of the record and transcript of the proceedings. Fees for this shall be borne by the State.

Petitions for writ of certiorari made under the provisions of this section shall be as provided in the Rules of Practice in the appellate division. (1973, c. 122, s. 1; 1975, c. 554.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added the second paragraph.

Applied in State v. Hart, 22 N.C. App. 738, 207 S.E.2d 766, cert. granted, 286 N.C. 213, 209 S.E.2d 317 (1974).

§ 15-180.3. Manner and time for taking appeal in criminal action. — (a) Any party entitled by law to appeal to the appellate division from a judgment or order of a superior or district court rendered in a criminal action may take appeal by:

- (1) Giving oral notice of appeal at trial, or
- (2) Filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within 10 days after the last day of the session at which rendered.

(b) Content and Service of Notice of Appeal. — The content and mode of service of the notice of appeal required by this section are as prescribed by the rules of appellate procedure. (1975, c. 391, s. 6.)

Editor's Note. — Session Laws 1975, c. 391, s. 16, provides: "This act shall be in effect on and after July 1, 1975, in respect of all appeals from the courts of the trial divisions, the Utilities Commission, the Industrial Commission, and the

Commissioner of Insurance to the courts of the appellate division which shall be taken on and after the effective date. This act shall not apply to appeals taken prior to its effective date."

§ 15-182. Appeal granted; bail for appearance.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973

act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-183. Custody of convicted persons not released. — Any person who shall appeal to the appellate division of the General Court of Justice, having been sentenced to a term of imprisonment for longer than 30 days, and is not released pending appeal, such person may be placed in the custody of the Secretary of Correction until such time as he may be released upon bail or by other lawful means and pending the action of the appellate division.

The provisions of G.S. 162-39, 148-4, 148-29 and 15-184 notwithstanding, the expense of maintaining any such person placed in the custody of the Secretary

of Correction pending appeal shall be the responsibility of the Department of Correction, as if such person had been committed upon affirmance of appeal, and the Department of Correction shall assume full financial responsibility and shall not charge the forwarding county with the cost and expense of maintaining such person pending appeal. Provided, nothing herein shall be deemed to relieve any county of the obligation to pay any indebtedness accruing prior to June 24, 1975, for the cost and expense of maintaining persons forwarded to the Department of Correction by that county. If the amount of indebtedness accrued by any county has not been paid in full within 24 months from June 24, 1975, the State Treasurer is hereby authorized to deduct the amount of that indebtedness from the intangible personal property taxes to be distributed to that county. If a county retains custody of a person who has been convicted, but has appealed such conviction, the Department of Correction shall pay to such county the same amount of money that would be required to maintain such person in the Department of Correction. (1850-1, c. 2; R. C., c. 35, s. 12; Code, s. 1181; Rev., s. 3280; C. S., s. 4653; 1953, c. 56; 1969, c. 542, s. 1; 1973, c. 1262, s. 10; c. 1286, s. 15; 1975, c. 796.)

Editor's Note. —

The 1975 amendment added the second paragraph.

Session Laws 1975, c. 573, amends Session

Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15-184. Appeal not to vacate judgment; stay of execution. — In criminal cases an appeal to the appellate division shall not have the effect of vacating the judgment appealed from, but upon perfecting the appeal as now required by law, either by giving bond or obtaining an order allowing appeal in forma pauperis, there shall be a stay of execution during the pendency of the appeal. If for any reason the defendant should wish to withdraw his appeal before the same is docketed in the appellate division, he may appear before the clerk of the superior court in which he was convicted and request in writing withdrawal of the appeal. The said clerk shall file and make an entry of such withdrawal and shall, if a sentence be called for, issue a commitment and deliver same to the sheriff. The sentence shall begin as of the date of the issuance of the commitment. (1887, c. 191, s. 1; c. 192, s. 4; Rev., s. 3281; 1919, c. 5; C. S., s. 4654; 1955, c. 882; 1969, c. 44, s. 38; 1975, c. 769.)

Editor's Note. —

The 1975 amendment deleted the former second and third sentences, which related to

notification of the Attorney General concerning the stay of execution.

§ 15-186. Procedure upon receipt of certificate of appellate division.

Language Directive. — The language of this section providing that "in criminal cases where the judgment is not affirmed the cases shall be placed upon the docket for trial at the first ensuing criminal session of the court after the receipt of such certificate" is merely a directive to the clerk of superior court as to steps to take when the appellate division has affirmed or failed to affirm the trial court's judgment. *State v. Jackson*, 24 N.C. App. 394, 210 S.E.2d 876 (1975).

Intent of General Assembly. — The General Assembly by this section did not intend to give

defendants on retrial right to a more speedy trial than that guaranteed to all by the Constitution of the United States and the Constitution of North Carolina. *State v. Jackson*, 287 N.C. 470, 215 S.E.2d 123 (1975).

Where a good cause for delay in the scheduling of a case for retrial is present, the case may be rescheduled for trial at a later session of court so long as defendant's constitutional right to a speedy retrial is not denied. *State v. Jackson*, 24 N.C. App. 394, 210 S.E.2d 876 (1975).

This section is not a compelling mandate that

the case actually be tried at the first ensuing session of court. *State v. Jackson*, 24 N.C. App. 394, 210 S.E.2d 876 (1975).

Whether there is good cause for delay in the scheduling of a case for retrial and whether the defendant has been denied his constitutional right to a speedy retrial must be answered in light of the facts in a particular case, and in answering these questions the same principles applied by the courts in deciding whether a defendant has been denied his right to a speedy trial should be applied. *State v. Jackson*, 24 N.C. App. 394, 210 S.E.2d 876 (1975).

The length of the delay, the cause of the delay, prejudice to the defendant, and waiver by defendant are interrelated factors to be considered in determining whether a trial has been unduly delayed. *State v. Jackson*, 24 N.C. App. 394, 210 S.E.2d 876 (1975).

Where a new trial is granted on appeal, the clerk is directed to schedule a case for retrial at the first ensuing session of court following receipt of the certificate ordering a new trial. *State v. Jackson*, 24 N.C. App. 394, 210 S.E.2d 876 (1975).

ARTICLE 19A.

Credits against the Service of Sentences and for Attainment of Prison Privileges.

§ 15-196.1. Credits allowed.

Cited in *State v. Roberts*, 286 N.C. 265, 210 S.E.2d 396 (1974).

ARTICLE 20.

Suspension of Sentence and Probation.

§ 15-197.1. **Special probation.** — (a) The legislative purpose and intent of this section is hereby defined as being to provide the sentencing judge an additional alternative to lengthy incarceration or probation when:

- (1) The offense charged carries a maximum prison sentence of not more than 10 years; and
- (2) The defendant would otherwise be sentenced to a longer determinate sentence or a longer minimum indeterminate sentence and the defendant has not served an active sentence within the previous five years; but
- (3) The court, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, determines that
- (4) The permanent rehabilitation of the offender would best be promoted by the imposition of a split sentence pursuant to this section.

(b) Upon entering a judgment of conviction for any offense where the maximum sentence is not more than 10 years, the court may, under the circumstances set forth in subsection (a) of this section, provide that the defendant be committed to the custody of the Department of Correction, if the active sentence exceeds 30 days, for a period not to exceed six months, or one-fourth the minimum active sentence suspended in lieu thereof, whichever is less, or to a local confinement or treatment facility, if the active sentence is 30 days or less, and that the execution of the remainder of the sentence be suspended and the defendant be placed on special probation for such period and upon such terms and conditions as the court deems best, which may include a condition that the defendant comply with applicable rules and regulations while in the custody of the Department of Correction. Credit for time spent in confinement prior to commitment shall not apply to reduce the length of the active sentence, but shall be applied to the remaining sentence of confinement in cases where probation

is revoked. The conditions of special probation shall be fixed in the same manner as probation. The period of the active sentence imposed to precede the term of special probation shall be served day for day, without parole eligibility or credit for "good time" granted by the Department of Correction. However, credit for "gained time" may be applied, but only for extra days actually worked. The period of probation, together with any extension thereof, and including the period of active sentence, shall not exceed five years. The court may revoke or modify any condition of special probation, or may change the period of probation within the limits provided by this section. Special probation may be revoked or terminated in the same manner as probation. (1975, c. 360, s. 1.)

Editor's Note. — Session Laws 1975, c. 360, s. 3, provides: "This act shall become effective July 1, 1975 and shall expire on July 1, 1977."

§ 15-199. Conditions of probation. — The court shall determine and may impose, by order duly entered, and may at any time modify the conditions of probation and may include among them the following, or any other: That the probationer shall:

- (15) Perform certain reasonable and useful community activities under appropriate supervision.
- (16) Within the first 30 days of his probation, visit, with his probation officer, a prison unit maintained by the Department of Correction for a tour thereof so that he may better appreciate the consequences of probation revocation. (1937, c. 132, s. 3; 1957, c. 1351; 1963, c. 54; c. 632, s. 2; 1969, c. 982; 1975, c. 131; c. 229, s. 2.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, added subdivision (15).

The second 1975 amendment added subdivision (16).

Session Laws 1975, c. 229, s. 3, provides that the act shall become effective 60 days after ratification. The act was ratified May 6, 1975.

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivisions (15) and (16) are set out.

Conditions Which Curtail Constitutional Rights. — This section recognizes a wide variety of conditions which may be imposed upon suspension of sentence, many of which touch upon and curtail rights guaranteed by State and federal Constitutions. *State v. Mitchell*, 22 N.C. App. 663, 207 S.E.2d 263 (1974).

Probation is punishment. *Hall v. Bostic*, 391 F. Supp. 1297 (W.D.N.C. 1974).

Time spent on probation is time spent in custody as far as the double jeopardy prohibition is concerned. *Hall v. Bostic*, 391 F. Supp. 1297 (W.D.N.C. 1974).

If probation revocation results in loss of liberty extending beyond the total period specified in the original judgment, it results in double jeopardy unless the extension of the period is caused by the prisoner himself, as in the case of escape. *Hall v. Bostic*, 391 F. Supp. 1297 (W.D.N.C. 1974).

Condition of Consent to Warrantless Search. — Conditions of the prior suspended sentences by which defendants gave consent to search of their premises at reasonable hours without a search warrant were valid. *State v. Mitchell*, 22 N.C. App. 663, 207 S.E.2d 263 (1974).

Voluntary waiver and consent to a warrantless search of one's premises may effectively be given by agreeing thereto as one of the conditions of a suspended sentence, and this should especially be true where such a condition is clearly designed to facilitate the State's supervision of the probationer's rehabilitation. *State v. Mitchell*, 22 N.C. App. 663, 207 S.E.2d 263 (1974).

§ 15-200. Termination of probation; arrest; subsequent disposition.

Constitutionality. — This section is unconstitutional in its requirement that upon violation of conditions of probation a probationer be incarcerated for the full period of the original suspended sentence. *Hall v. Bostic*, 391 F. Supp. 1297 (W.D.N.C. 1974).

The probation revocation procedure of this section subjects probationer to double jeopardy through a proceeding or process not of his choosing and not the result of an option which he pursued. *Hall v. Bostic*, 391 F. Supp. 1297 (W.D.N.C. 1974).

If probation revocation results in loss of liberty extending beyond the total period specified in the original judgment, it results in double jeopardy unless the extension of the period is caused by the prisoner himself, as in the case of escape. *Hall v. Bostic*, 391 F. Supp. 1297 (W.D.N.C. 1974).

Time spent on probation is time spent in custody as far as the double jeopardy prohibition is concerned. *Hall v. Bostic*, 391 F. Supp. 1297 (W.D.N.C. 1974).

Procedure by which probation is revoked need not follow strict due process because the original trial and pre-sentence hearing have provided due process covering the original sentence. *Hall v. Bostic*, 391 F. Supp. 1297 (W.D.N.C. 1974).

The primary purpose, etc. —

In accord with original. See *State v. Simpson*, 25 N.C. App. 176, 212 S.E.2d 566 (1975).

Discretion of Court. — In hearings under this section the findings of fact and the judgment entered thereupon are matters to be determined in the sound discretion of the court, and the exercise of that discretion in the absence of gross abuse cannot be reviewed. *State v. Simpson*, 25 N.C. App. 176, 212 S.E.2d 566 (1975).

Under this section it is apparent that although the trial judge exercises discretion whether to revoke or not to revoke probation, nevertheless once he has exercised that discretion the imposition of the full original sentence is automatic. *Hall v. Bostic*, 391 F. Supp. 1297 (W.D.N.C. 1974).

Where the judgment does not specify the period of time that execution of the sentence is suspended upon conditions, execution of the sentence is suspended or stayed for the period of time that the court is empowered by this section to suspend the sentence. *State v. Simpson*, 25 N.C. App. 176, 212 S.E.2d 566 (1975).

A condition which is a violation of the defendant's constitutional rights and, therefore, beyond the power of the court to impose is per se unreasonable. *State v. Simpson*, 25 N.C. App. 176, 212 S.E.2d 566 (1975).

Condition directly related to and growing out of the offense for which the defendant is convicted, and consistent with proper punishment for the crime, neither violates the defendant's constitutional rights nor is otherwise unreasonable. *State v. Simpson*, 25 N.C. App. 176, 212 S.E.2d 566 (1975).

Defendant must not be oppressed or unduly burdened by the suspension. *State v. Simpson*, 25 N.C. App. 176, 212 S.E.2d 566 (1975).

Defendant's consent does not preclude him from contesting reasonableness of condition which he has broken when such breach is made the ground for putting the prison sentence into effect. *State v. Simpson*, 25 N.C. App. 176, 212 S.E.2d 566 (1975).

In a probation hearing, the court is not bound, etc. —

At a hearing to revoke the suspension of a prison sentence for the alleged violation of a valid condition of suspension, the court is not bound by strict rules of evidence. All that is required in a hearing of this character is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation or that the defendant has violated without lawful excuse a valid condition upon which the sentence was suspended. *State v. Simpson*, 25 N.C. App. 176, 212 S.E.2d 566 (1975).

Where defendants agreed to consent to a warrantless search of their premises as a condition of a suspended sentence, officers appearing to conduct the search did not have the right to break unannounced into defendants' home. They should have first announced their presence and requested entry. Had entry been refused, defendants as probationers could have been cited for violation of the terms of their probation, and upon a finding that the conditions had been violated, the previously suspended sentences could have been put into effect. *State v. Mitchell*, 22 N.C. App. 663, 207 S.E.2d 263 (1974).

Probation is punishment. *Hall v. Bostic*, 391 F. Supp. 1297 (W.D.N.C. 1974).

§ 15-200.1. Notice of intention to pray revocation of probation or suspension; appeal from revocation. — In all cases of probation or suspension of sentence in the superior and district court[s], before a probation or suspension of sentence may be revoked, the probation officer, district attorney or other officer shall inform the probationer in writing, not less than seven days prior to the time he intends to pray judgment placing such suspended sentence into effect or revocation of such probation, [of] the grounds upon which revocation is prayed. The probationer shall be entitled to representation by counsel, including court-appointed counsel if he is indigent and confinement is possible. In all cases where probation or suspension of sentence entered in a court inferior to the superior court is revoked and sentence is placed into effect, the defendant shall have the right of appeal therefrom to the superior court, and, upon such appeal, the matter shall be determined by the judge without a jury, but only upon the issue of whether or not there has been a violation of the terms of probation or of the suspended sentence. Upon its finding that the conditions were violated, the superior court shall enforce the judgment of the lower court unless the judge finds as a fact that circumstances and conditions surrounding the terms of the probation and the violation thereof have substantially changed, so that enforcement of the judgment of the lower court would not accord justice to the defendant, in which case the judge may modify or revoke the terms of the probationary or suspended sentence in the court's discretion. Appeals from lower courts to the superior courts from judgments revoking probation or invoking suspended sentence may be heard in session or out of session, in the county or out of the county, by the resident superior court judge of the district or the superior court judge assigned to hold the courts of the district, or a judge of the superior court commissioned to hold court in the district, or a special superior court judge residing in the district. (1951, c. 1038; 1963, c. 632, s. 3; 1969, c. 1013, s. 8; 1973, c. 47, s. 2; c. 1141, s. 20; 1975, c. 309, s. 1.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted, at the end of the first sentence, the language beginning "not less than seven days" for "of his intention to pray the court to revoke probation or suspension and to put the suspended sentence into effect, and shall set forth in writing the grounds upon which

revocation is prayed." The amendment also deleted the former third sentence, which read "He is also entitled to a reasonable time to prepare his defense" and substituted "sentence" for "sentences" near the beginning of the last sentence.

Applied in *State v. Harris*, 26 N.C. App. 254, 215 S.E.2d 836 (1975).

§ 15-200.2: Repealed by Session Laws 1975, c. 309, s. 2, effective July 1, 1975.

§ 15-205. Duties and powers of the probation officers. — A probation officer shall investigate all cases referred to him for investigation by the judges of the courts or by the Secretary of Correction, and shall report in writing thereon. He shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct him regarding the same. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring reports, and in other ways, and shall report thereon in writing as often as the court or the Secretary of Correction may require. Such officer shall use all practicable and suitable methods, not inconsistent with the conditions imposed by the court or the Secretary of Correction, to aid and encourage persons on probation to bring about improvement in their conduct and condition, and shall within the first 30 days of a person's probation take such person to a prison unit maintained by the Department of Correction for a tour

thereof so that he may better appreciate the consequences of probation revocation. Such officer shall keep detailed records of his work; shall make such reports in writing to the Secretary of Correction as he may require; and shall perform such other duties as the Secretary of Correction may require. A probation officer shall have, in the execution of his duties, the powers of arrest and, to the extent necessary for the performance of his duties, the same right to execute process as is now given, or that may hereafter be given by law, to the sheriffs of this State. (1937, c. 132, s. 9; 1973, c. 1262, s. 10; 1975, c. 229, s. 1.)

Editor's Note. —

The 1975 amendment added the language following "condition" at the end of the fourth sentence.

Session Laws 1975, c. 229, s. 3, provides that the act shall become effective 60 days after ratification. The act was ratified May 6, 1975.

§ 15-208: Repealed by Session Laws 1975, c. 138.

ARTICLE 22.

Review of Criminal Trials.

§ 15-217. Institution of proceeding; effect on other remedies.

Review on Habeas Corpus in Federal Court, etc. —

Petitioner must present each of his contentions raised in his application for federal habeas corpus in a post-conviction hearing following the appropriate State procedure under the "North Carolina Post-Conviction Hearing

Act" before such contention may be raised properly before the United States District Court. *Manning v. Jones*, 385 F. Supp. 312 (E.D.N.C. 1974).

Cited in State v. Vick, 287 N.C. 37, 213 S.E.2d 335 (1975).

§ 15-218. Contents of petition; waiver of claims not alleged.

Quoted in Manning v. Jones, 385 F. Supp. 312 (E.D.N.C. 1974).

§ 15-222. Review by application for certiorari.

Cited in Manning v. Jones, 385 F. Supp. 312 (E.D.N.C. 1974).

ARTICLE 23.

Expunction of Records of Youthful Offenders.

§ 15-223. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of

ascertaining whether any person charged with an offense has been previously granted a discharge. (1973, c. 47, s. 2; c. 748; 1975, c. 650, s. 5.)

Editor's Note. —

The 1975 amendment, effective Oct. 1, 1975, substituted "Administrative Office of the Courts" for "North Carolina Department of Justice" in two places in the first sentence of subsection (d).
Session Laws 1975, c. 650, s. 6, provides in part: "All expunction records presently

maintained in the North Carolina Department of Justice in accordance with G.S. 90-96, G.S. 90-113.14 and G.S. 15-223 will be transferred to the Administrative Office of the Courts at the time this act becomes effective."
As the rest of the section was not changed by the amendment, only subsection (d) is set out.

Chapter 15A.

Criminal Procedure Act.

SUBCHAPTER I. GENERAL.

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Definitions and General Provisions.

Sec.

15A-101. Definitions.

SUBCHAPTER III. CRIMINAL PROCESS.

Article 17.

Criminal Process.

15A-302. Citation.

15A-303. Criminal summons.

15A-305. Order for arrest.

SUBCHAPTER V. CUSTODY.

Article 23.

**Police Processing and Duties
upon Arrest.**

15A-501. Police processing and duties upon arrest generally.

15A-503. Police assistance to persons arrested while unconscious or semi-conscious.

15A-504 to 15A-510. [Reserved.]

Article 24.

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15A-511. Initial appearance.

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PROCEEDINGS.**

Article 30.

Probable-Cause Hearing.

15A-612. Disposition of charge on probable-cause hearing.

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15A-743. Application for issuance of requisition; by whom made; contents.

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15A-801. Subpoena for witness.

15A-802. Subpoena for the production of documentary evidence.

**SUBCHAPTER IX. PRETRIAL
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15A-921. Pleadings in criminal cases.

15A-924. Contents of pleadings; duplicity; alleging and proving previous convictions; failure to charge crime; surplusage.

15A-926. Joinder of offenses and defendants.

Article 51.

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15A-943. Arraignment in superior court—required calendaring.

SUBCHAPTER X. TRIAL.

Article 56.

Incapacity to Proceed.

15A-1002. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.

15A-1003. Referral of incapable defendant for civil commitment proceedings.

15A-1004. Orders for safeguarding of defendant and return for trial.

Article 57.

Pleas.

15A-1011. Pleas in district and superior courts; waiver of appearance.

Article 58.

**Procedures Relating to Guilty Pleas in
Superior Court.**

15A-1021. Plea conference; improper pressure prohibited; submission of arrangement to judge.

Sec.

15A-1027. Limitation on collateral attack on conviction.

Editor's Note.—

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

Session Laws 1975, c. 166, ss. 27 and 28, provide:

"Sec. 27. Chapter 15A of the General Statutes is hereby amended by striking out the words "district solicitor" wherever the words appear throughout Chapter 15A, and inserting in lieu thereof the words "district attorney," and by striking out the word "solicitor," wherever the word appears throughout Chapter 15A and

inserting in lieu thereof the word "prosecutor." The Michie Company, publishers of the General Statutes of North Carolina, is authorized and directed to make the changes directed above wherever they might appear appropriate in the text of Chapter 15A of the General Statutes.

"Sec. 28. This act shall become effective on the date that Chapter 1286 of the 1973 Session Laws becomes effective."

Sections in Chapter 15A have not been set out in this supplement, merely to give effect to the changes directed by Session Laws 1975, c. 166, s. 27. Such changes will be made as the sections affected are set out for other purposes.

SUBCHAPTER I. GENERAL.

ARTICLE 1.

Definitions and General Provisions.

§ 15A-101. **Definitions.** — Unless the context clearly requires otherwise, the following words have the listed meanings:

- (2) Clerk. — Any clerk of superior court, acting clerk, or assistant or deputy clerk.
 - (4) District Attorney. — The person elected and currently serving as district attorney in his prosecutorial district.
 - (7) Prosecutor. — The district attorney, any assistant district attorney or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney.
- (1975, c. 166, s. 2.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, rewrote subdivision (2), substituted "attorney" for "solicitor" and "prosecutorial" for "solicitorial" in subdivision (4) and substituted "Prosecutor" for "Solicitor"

in one place, and "attorney" for "solicitor" in four places, in subdivision (7).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (2), (4) and (7) are set out.

SUBCHAPTER II. LAW-ENFORCEMENT AND INVESTIGATIVE PROCEDURES.

ARTICLE 11.

Search Warrants.

§ 15A-245. **Basis for issuance of a search warrant; duty of the issuing official.**

When Probable Cause Exists. —

Where when the detailed nature of the informant's report and the fact that the officer

swore that his informer was reliable are considered in a common sense and practical

fashion, it would induce a prudent and disinterested magistrate to credit the report and conclude that the informant's information was reliable and not a casual rumor or a conclusory fabrication so that the affidavit was sufficient to warrant a finding of probable cause to search the defendant's house. *State v. Chapman*, 24 N.C. App. 462, 211 S.E.2d 489 (1975).

The test to determine the sufficiency of affidavits upon which search warrants are issued is that the magistrate must be informed of some of the underlying circumstances from which the informant concluded that what he

stated to the affiant was correct, and some of the underlying circumstances from which the officer concluded that the informant whose identity need not be disclosed was "credible" or his information "reliable." *State v. Chapman*, 24 N.C. App. 462, 211 S.E.2d 489 (1975).

Present Reliability Required. — In issuing a search warrant based upon the information of an informant, an averment of previous reliability of the informant is not necessary, but the inquiry is whether the informant's present information is truthful or reliable. *State v. Chapman*, 24 N.C. App. 462, 211 S.E.2d 489 (1975).

§ 15A-246. Form and content of the search warrant.

A search warrant will be presumed regular, etc. —

In accord with original. See *State v. Travatello*, 24 N.C. App. 511, 211 S.E.2d 467 (1975).

Scope of Warrant Not Exceeded. — The search of defendant's premises did not exceed the scope of the warrant by including a tool shed as well as the house itself. *State v. Travatello*, 24 N.C. App. 511, 211 S.E.2d 467 (1975).

§ 15A-251. Entry by force.

Where method of entry renders search illegal, the evidence obtained is not competent

at defendants' trial. *State v. Mitchell*, 22 N.C. App. 663, 207 S.E.2d 263 (1974).

§ 15A-253. Scope of the search; seizure of items not named in the warrant.

Scope of Warrant Not Exceeded. — The search of defendant's premises did not exceed the scope of the warrant by including a tool shed as well as the house itself. *State v. Travatello*, 24 N.C. App. 511, 211 S.E.2d 467 (1975).

Items in Plain View. — While conducting a lawful search where officers found in plain view

property identified as that reported missing, these items were lawfully seized. *State v. Travatello*, 24 N.C. App. 511, 211 S.E.2d 467 (1975).

SUBCHAPTER III. CRIMINAL PROCESS.

ARTICLE 17.

Criminal Process.

§ 15A-302. Citation.

(e) **Dismissal by Prosecutor.** — If the prosecutor finds that no crime is charged in the citation, or that there is insufficient evidence to warrant prosecution, he may dismiss the charge and so notify the person cited. An appropriate entry must be made in the records of the clerk. It is not necessary to enter the dismissal in open court or to obtain consent of the judge.

(f) Citation No Bar to Criminal Summons or Warrant. — A criminal summons or a warrant may issue notwithstanding the prior issuance of a citation for the same offense.

(1975, c. 166, ss. 3, 27.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted "prosecutor" for "solicitor" in subsection (e) and deleted subdivision (2) of subsection (f), which provided for the enforcement of citations in the case of motor vehicle offenses.

As the rest of the section was not changed by the amendment, only subsections (e) and (f) are set out.

§ 15A-303. Criminal summons.

(e) Enforcement.—

- (1) A warrant for arrest, based upon the same or another showing of probable cause, may be issued by the same or another issuing official, notwithstanding the prior issuance of a criminal summons.
- (2) An order for arrest, as provided in G.S. 15A-305, may issue for the arrest of any person who fails to appear as directed in a duly executed criminal summons.
- (3) A person served with criminal summons who willfully fails to appear as directed may be punished for contempt as provided in G.S. 5-1.
- (4) Repealed by Session Laws 1975, c. 166, s. 4, effective September 1, 1975.

(f) Who May Issue. — A criminal summons, valid throughout the State, may be issued by any person authorized to issue warrants for arrest. (1973, c. 1286, s. 1; 1975, c. 166, ss. 4, 5.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, repealed subdivision (4) of subsection (e), which provided for the enforcement of citations in the case of motor vehicle offenses, and inserted "valid throughout the State" in subsection (f).

As the rest of the section was not changed by the amendment, only subsections (e) and (f) are set out.

§ 15A-305. Order for arrest.

(d) Who May Issue. — An order for arrest, valid throughout the State, may be issued by any person authorized to issue warrants for arrest. (1973, c. 1286, s. 1; 1975, c. 166, s. 6.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, added subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

SUBCHAPTER IV. ARREST.

ARTICLE 20.

Arrest.

§ 15A-401. Arrest by law-enforcement officer.

II. ARREST WITHOUT WARRANT.

A. In General.

Likelihood of Escape. —

In accord with 3rd paragraph in original. See *State v. White*, 25 N.C. App. 398, 213 S.E.2d 394 (1975).

IV. ENTRY ON PREMISES.

Forcible Entry Where Admittance Demanded, etc. —

In accord with 5th paragraph in original. See *State v. Gagne*, 22 N.C. App. 615, 207 S.E.2d 384 (1974).

SUBCHAPTER V. CUSTODY.

ARTICLE 23.

Police Processing and Duties upon Arrest.

§ 15A-501. Police processing and duties upon arrest generally. — Upon the arrest of a person, with or without a warrant, but not necessarily in the order hereinafter listed, a law-enforcement officer:

- (1) Must inform the person arrested of the charge against him or the cause for his arrest.
 - (2) Must, with respect to any person arrested without a warrant and, for purpose of setting bail, with respect to any person arrested upon a warrant or order for arrest, take the person arrested before a judicial official without unnecessary delay.
- (1975, c. 166, ss. 7, 8.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, added "or the cause for his arrest" at the end of subdivision (1) and substituted "order for arrest" for "order of arrest" in subdivision (2).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (1) and (2) are set out.

§ 15A-503. Police assistance to persons arrested while unconscious or semiconscious. — (a) Whenever a law-enforcement officer arrests a person who is unconscious, semiconscious, or otherwise apparently suffering from some disabling condition, and who is unable to provide information on the causes of the condition, the officer should make a reasonable effort to determine if the person arrested is wearing a bracelet or necklace containing the Medic Alert Foundation's emergency alert symbol to indicate that the person suffers from diabetes, epilepsy, a cardiac condition, or any other form of illness which would cause a loss of consciousness. If such a symbol is found indicating that the person being arrested suffers from one of those conditions, the officer must make a reasonable effort to have appropriate medical care provided.

(b) Failure of a law-enforcement officer to make a reasonable effort to discover an emergency alert symbol, as required by this section, does not by itself establish negligence of the officer, but may be considered along with other evidence to determine if the officer took reasonable precautions to ascertain the emergency medical needs of the person in his custody.

(c) A person who is provided medical care under the provisions of this section is liable for the reasonable costs of that care unless he is indigent.

(d) Repealed by Session Laws 1975, c. 818, s. 1. (1975, c. 306, s. 1; c. 818, s. 1.)

Editor's Note. — The 1975 amendment repealed subsection (d), which stated: "Willful false representation of the existence of diabetes, epilepsy, a cardiac condition, or other disabling

condition covered by this section, is punishable as provided in G.S. 14-223.1."

Session Laws 1975, c. 306, s. 3, makes the act effective Oct. 1, 1975.

§§ 15A-504 to 15A-510: Reserved for future codification purposes.

ARTICLE 24.

Initial Appearance.

§ 15A-511. Initial appearance. — (a) Appearance before Magistrate.—

- (1) A law-enforcement officer making an arrest with or without a warrant

must take the arrested person without unnecessary delay before a magistrate as provided in G.S. 15A-501.

- (2) The magistrate must proceed in accordance with this section, except in those cases in which he has the power to determine the matter pursuant to G.S. 7A-273. In those cases, if the arrest has been without a warrant, the magistrate must prepare a magistrate's order containing a statement of the crime with which the defendant is charged.

(b) Statement by the Magistrate. — The magistrate must inform the defendant of:

- (1) The charges against him;
- (2) His right to communicate with counsel and friends; and
- (3) The general circumstances under which he may secure release under the provisions of Article 26, Bail.

(c) Procedure When Arrest Is without Warrant; Magistrate's Order. — If the person has been arrested, for a crime, without a warrant:

- (1) The magistrate must determine whether there is probable cause to believe that a crime has been committed and that the person arrested committed it, and in the manner provided by G.S. 15A-304(d).
- (2) If the magistrate determines that there is no probable cause the person must be released.
- (3) If the magistrate determines that there is probable cause, he must issue a magistrate's order:
 - a. Containing a statement of the crime of which the person is accused in the same manner as is provided in G.S. 15A-304(c) for a warrant for arrest, and
 - b. Containing a finding that the defendant has been arrested without a warrant and that there is probable cause for his detention.
- (4) Following the issuance of the magistrate's order, the magistrate must proceed in accordance with subsection (e) and must file the order with any supporting affidavits and records in the office of the clerk.

(1975, c. 166, ss. 9-11.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, inserted "a magistrate's order containing" in the second sentence of subdivision (2) of subsection (a), substituted "release under the provisions of Article 26, Bail" for "pretrial release" at the end of subdivision

(3) of subsection (b) and inserted "for a crime" in the introductory language of subsection (c).

As the rest of the section was not changed by the amendment, only subsections (a), (b) and (c) are set out.

ARTICLE 26.

Bail.

§ 15A-531. Definitions. — As used in this Article the following definitions apply unless the context clearly requires otherwise:

- (1) **Bail Bond.** — An undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State of North Carolina in a stated amount. Bail bonds include an unsecured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 109-25, and an appearance bond secured by at least one solvent surety.

(1975, c. 166, s. 12.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, deleted "a premium-secured appearance bond" following "an unsecured appearance bond" in the second sentence of subdivision (1).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (1) are set out.

§ 15A-534. Procedure for determining conditions of pretrial release.

(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him at any time prior to:

- (1) In a misdemeanor case tried in the district court, the noting of an appeal; and
- (2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by him, at any time prior to the time set out in G.S. 15A-536(a). (1975, c. 166, s. 13.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted "first" for "initial" in two places near the beginning of subsection (e).

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

§ 15A-535. Issuance of policies on pretrial release. — (a) Subject to the provisions of this Article, the senior resident superior court judge of each judicial district in consultation with the chief district court judge must devise and issue recommended policies to be followed within the district in determining whether, and upon what conditions, a defendant may be released before trial.

(b) In any county in which there is a pretrial release program, the senior resident superior court judge of the judicial district may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by judicial officials to supervision of such programs, and subject to its rules and regulations, in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a). (1973, c. 1286, s. 1; 1975, c. 791, s. 1.)

Editor's Note. — The 1975 amendment designated the existing section as subsection (a) and added subsection (b).

Session Laws 1975, c. 791, s. 2, makes the amendment effective the same date that

Chapter 1286, Session Laws 1973 becomes effective. That Chapter, originally made effective July 1, 1975, was amended by Session Laws 1975, c. 573, so as to make it effective Sept. 1, 1975.

SUBCHAPTER VI. PRELIMINARY PROCEEDINGS.

ARTICLE 30.

Probable-Cause Hearing.

§ 15A-612. Disposition of charge on probable-cause hearing. — (a) At the conclusion of a probable-cause hearing the judge must take one of the following actions:

- (1) If he finds that the defendant probably committed the offense charged,

or a lesser included offense of such offense within the original jurisdiction of the superior court, he must bind the defendant over to a superior court for further proceedings in accordance with this Chapter. The judge must note his findings in the case records.

(2) If he finds no probable cause as to the offense charged but probable cause with respect to a lesser included offense within the original jurisdiction of the district court, he may set the case for trial in the district court in accordance with the terms of G.S. 15A-613. In the absence of a new pleading, the judge may not set a case for trial in the district court on any offense which is not lesser included.

(3) If he finds no probable cause pursuant to subdivisions (1) or (2) as to any charge, he must dismiss the proceedings in question.

(b) No finding made by a judge under this section precludes the State from instituting a subsequent prosecution for the same offense. (1973, c. 1286, s. 1; 1975, c. 166, s. 14.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted "pleading" for "warrant or information" in the second sentence of subdivision (2) of subsection (a).

SUBCHAPTER VII. SPEEDY TRIAL; ATTENDANCE OF WITNESSES.

ARTICLE 37.

Uniform Criminal Extradition Act.

§ 15A-721. Definitions.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973

act effective Sept. 1, 1975, rather than July 1, 1975.

§ 15A-743. Application for issuance of requisition; by whom made; contents.

(b) When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the Director of Prisons or sheriff of the county from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

(1975, c. 132.)

Editor's Note. — The 1975 amendment substituted "Director of Prisons" for "warden of the institution" preceding "or sheriff" and

deleted a comma following "county" the second time that word appears near the middle of subsection (b).

ARTICLE 38.

*Interstate Agreement on Detainers.***§ 15A-761. Agreement on Detainers entered into; form and contents.****Editor's Note. —**

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973

act effective Sept. 1, 1975, rather than July 1, 1975.

SUBCHAPTER VIII. ATTENDANCE OF WITNESSES; DEPOSITIONS.

ARTICLE 42.

Attendance of Witnesses Generally.

§ 15A-801. Subpoena for witness. — The presence of a person as a witness in a criminal proceeding may be obtained by subpoena, which must be issued and served in the manner provided in Rule 45 of the Rules of Civil Procedure, G.S. 1A-1. (1973, c. 1286, s. 1; 1975, c. 166, s. 15.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted "G.S. 1A-1" for "G.S. 1-1A" at the end of the section.

§ 15A-802. Subpoena for the production of documentary evidence. — The production of records, books, papers, documents, or tangible things in a criminal proceeding may be obtained by subpoena which must be issued and served in the manner provided in Rule 45 of the Rules of Civil Procedure, G.S. 1A-1. (1973, c. 1286, s. 1; 1975, c. 166, s. 15.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted "G.S. 1A-1" for "G.S. 1-1A" at the end of the section.

ARTICLE 43.

*Uniform Act to Secure Attendance of Witnesses from without a State in Criminal Proceedings.***§ 15A-811. Definitions.****Editor's Note. —**

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973

act effective Sept. 1, 1975, rather than July 1, 1975.

SUBCHAPTER IX. PRETRIAL PROCEDURE.

ARTICLE 48.

Discovery in the Superior Court.

§ 15A-903. Disclosure of evidence by the State — information subject to disclosure.

The common law, etc. —

In accord with original. See *State v. Chavis*, 24 N.C. App. 148, 210 S.E.2d 555 (1974).

Inspection of Pretrial Statement. —

Defendants' constitutionally protected rights of confrontation, due process, and equal protection

were violated by the denial of their request to inspect what they contended was a written pretrial out-of-court statement by the State's

witness. *State v. Chavis*, 24 N.C. App. 148, 210 S.E.2d 555 (1974).

§ 15A-907. Continuing duty to disclose. — If a party, subject to compliance with an order issued pursuant to this Article, discovers prior to or during trial additional evidence or decides to use additional evidence, and the evidence is or may be subject to discovery or inspection under this Article, he must promptly notify the attorney for the other party of the existence of the additional evidence. (1973, c. 1286, s. 1; 1975, c. 166, s. 16.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, deleted "or the name of

each additional witness" at the end of the section.

§ 15A-910. Regulation of discovery — failure to comply. — If at any time during the course of the proceedings the court determines that a party has failed to comply with this Article or with an order issued pursuant to this Article, the court in addition to exercising its contempt powers may

- (1) Order the party to permit the discovery or inspection, or
- (2) Grant a continuance or recess, or
- (3) Prohibit the party from introducing evidence not disclosed, or
- (4) Enter other appropriate orders. (1973, c. 1286, s. 1; 1975, c. 166, s. 17.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, deleted former subsections (b) and (c), which provided remedies

where a party called a witness other than a rebuttal witness without first giving notice to the other party of the name of the witness.

ARTICLE 49.

Pleadings and Joinder.

§ 15A-921. Pleadings in criminal cases. — Subject to the provisions of this Article, the following may serve as pleadings of the State in criminal cases:

- (4) Magistrate's order pursuant to G.S. 15A-511 after arrest without warrant.

(1975, c. 166, s. 18.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted "G.S. 15A-511" for "G.S. 15A-511(c)" in subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (4) are set out.

§ 15A-924. Contents of pleadings; duplicity; alleging and proving previous convictions; failure to charge crime; surplusage.

(d) In alleging and proving a prior conviction, it is sufficient to state that the defendant was at a certain time and place convicted of the previous offense, without otherwise fully alleging all the elements. A duly certified transcript of the record of a prior conviction is, upon proof of the identity of the person of the defendant, sufficient evidence of a prior conviction. If the surname of a defendant charged is identical to the surname of a defendant previously

convicted and there is identity with respect to one given name, or two initials, or two initials corresponding with the first letters of given names, between the two defendants, and there is no evidence that would indicate the two defendants are not one and the same, the identity of name is prima facie evidence that the two defendants are the same person. Proof of previous convictions under G.S. 20-138 and 20-139 may be made in accordance with G.S. 8-35.1.

(1975, c. 642, s. 2.)

Editor's Note. — The 1975 amendment, effective Oct. 1, 1975, added the last sentence of subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 15A-926. Joinder of offenses and defendants. — (a) Joinder of Offenses. — Two or more offenses may be joined in one pleading or for trial when the offenses, whether felonies or misdemeanors or both, are based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan. Each offense must be stated in a separate count as required by G.S. 15A-924.

(b) Separate Pleadings for Each Defendant and Joinder of Defendants for Trial. —

- (1) Each defendant must be charged in a separate pleading.
- (2) Upon written motion of the prosecutor, charges against two or more defendants may be joined for trial:
 - a. When each of the defendants is charged with accountability for each offense; or
 - b. When, even if all of the defendants are not charged with accountability for each offense, the several offenses charged:
 1. Were part of a common scheme or plan; or
 2. Were part of the same act or transaction; or
 3. Were so closely connected in time, place, and occasion that it would be difficult to separate proof of one charge from proof of the others.

(c) Failure to Join Related Offenses. —

- (1) When a defendant has been charged with two or more offenses joinable under subsection (a) his timely motion to join them for trial must be granted unless the court determines that because the prosecutor does not have sufficient evidence to warrant trying some of the offenses at that time or if, for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to make this motion constitutes a waiver of any right of joinder of offenses joinable under subsection (a) with which the defendant knew he was charged.
- (2) A defendant who has been tried for one offense may thereafter move to dismiss a charge of a joinable offense. The motion to dismiss must be made prior to the second trial, and must be granted unless
 - a. A motion for joinder of these offenses was previously denied, or
 - b. The court finds that the right of joinder has been waived, or
 - c. The court finds that because the prosecutor did not have sufficient evidence to warrant trying this offense at the time of the first trial, or because of some other reason, the ends of justice would be defeated if the motion were granted.
- (3) The right to joinder under this subsection is not applicable when the defendant has pleaded guilty or no contest to the previous charge. (1973, c. 1286, s. 1; 1975, c. 166, ss. 19, 27.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, inserted "or for trial" near the beginning of the first sentence of

subsection (a) and substituted "prosecutor" for "solicitor" in subdivision (2) of subsection (b) and in subdivisions (1) and (2) of subsection (c).

ARTICLE 51.

*Arraignment.***§ 15A-943. Arraignment in superior court—required calendaring.**

(c) Notwithstanding the provisions of subsection (a) of this section, in any county where as many as three simultaneous sessions of superior court, whether criminal, civil, or mixed, are regularly scheduled, the prosecutor may calendar arraignments in any of the criminal or mixed sessions, at least every other week, upon any day or days of a session, and jury cases may be calendared for trial in any other court at which criminal cases may be heard, upon such days. (1973, c. 1286, s. 1; 1975, c. 471.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added subsection (c).

As the rest of section was not changed by the amendment, only subsection (c) is set out.

SUBCHAPTER X. TRIAL.

ARTICLE 56.

Incapacity to Proceed.

§ 15A-1002. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders. — (a) The question of the capacity of the defendant to proceed may be raised at any time by the prosecutor, the defendant, the defense counsel, or the court on its own motion.

(b) When the capacity of the defendant to proceed is questioned, the court:

- (1) May appoint one or more impartial medical experts to examine the defendant and return a written report describing the present state of the defendant's mental health. Reports so prepared are admissible at the hearing and the court may call any expert so appointed to testify at the hearing. In addition, any expert so appointed may be called to testify at the hearing by the court at the request of either party.
- (2) May commit the defendant to a State mental health facility for observation and treatment for the period necessary to determine the defendant's capacity to proceed. In no event may the period exceed 60 days. The superintendent of the facility must direct his report on defendant's condition to the defense attorney and to the clerk of superior court, who must bring it to the attention of the court. The report is admissible at the hearing.
 - a. If the report indicates that the defendant lacks capacity to proceed, proceedings for involuntary civil commitment under Chapter 122 of the General Statutes may be instituted on the basis of the report in either the county where the criminal proceedings are pending or in the county in which the defendant is hospitalized.
 - b. If the report indicates that the defendant has capacity to proceed, the clerk must direct the sheriff to return him to the county.
- (3) Must hold a hearing to determine the defendant's capacity to proceed. If examination is ordered pursuant to subdivision (1) or (2), the hearing must be held after the examination. Reasonable notice must be given to the defendant and to the prosecutor and the State and the defendant may introduce evidence.

(c) The court may make appropriate temporary orders for the confinement or security of the defendant pending the hearing or ruling of the court on the

question of the capacity of the defendant to proceed. (1973, c. 1286, s. 1; 1975, c. 166, ss. 20, 27.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted "prosecutor" for "solicitor" in subsection (a) and in the third sentence of subdivision (3) of subsection (b). The amendment also substituted "involuntary civil

commitment under Chapter 122 of the General Statutes" for "judicial hospitalization" near the beginning of paragraph a of subdivision (2) of subsection (b).

§ 15A-1003. Referral of incapable defendant for civil commitment proceedings. — (a) If a defendant is found to be incapable of proceeding, the court must enter an order directing the initiation of proceedings for involuntary civil commitment, and the court's order is authority for a magistrate or clerk to order a law-enforcement officer to take the defendant into custody for examination by a qualified physician under G.S. 122-58.3(b), or for processing as an emergency case under G.S. 122-58.18.

(b) The court may make appropriate orders for the temporary detention of the defendant pending that proceeding.

(c) Evidence used at the hearing with regard to capacity to proceed is admissible in the involuntary civil commitment proceedings. (1973, c. 1286, s. 1; 1975, c. 166, s. 20.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted "involuntary civil commitment" for "judicial hospitalization" in subsections (a) and (c) and substituted the

language beginning "authority for a magistrate" for "a sufficient basis for the initiation of those proceedings" at the end of subsection (a).

§ 15A-1004. Orders for safeguarding of defendant and return for trial.

(b) If the defendant is not placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, appropriate orders may include any of the procedures, orders, and conditions provided in Article 26 of this Chapter, Bail, specifically including the power to place the defendant in the custody of a designated person or organization agreeing to supervise him.

(c) If the defendant is placed in the custody of a hospital or other institution in a proceeding for involuntary civil commitment, the orders must provide for reporting to the clerk if the defendant is to be released from the custody of the hospital or institution. The original or supplemental orders may make provisions as in subsection (b) in the event that the defendant is released.

(d) If the defendant is placed in the custody of a hospital or institution pursuant to proceedings for involuntary civil commitment, or if the defendant is placed in the custody of another person pursuant to subsection (b), the orders of the trial court must require that the hospital, institution, or individual report the condition of the defendant to the clerk at the same times that reports on the condition of the defendant-respondent are required under Chapter 122 of the General Statutes, Article 5A (Involuntary Commitment), or more frequently if the court requires, and immediately if the defendant gains capacity to proceed. The order must also require the report to state the likelihood of the defendant's gaining capacity to proceed, to the extent that the hospital, institution, or individual is capable of making such a judgment.

(1975, c. 166, s. 20.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, substituted "involuntary civil commitment" for "judicial hospitalization" near the beginning of subsections (b), (c) and (d)

and substituted the language beginning "at the same times" and ending "(Involuntary Commitment)" for "annually" in the first sentence of subsection (d).

As the rest of the section was not changed by the amendment, only subsections (b), (c) and (d) are set out.

ARTICLE 57.

Pleas.

§ 15A-1011. Pleas in district and superior courts; waiver of appearance. — (a) A defendant may plead not guilty, guilty, or no contest “(nolo contendere).” A plea may be received only from the defendant himself in open court except when:

- (1) The defendant is a corporation, in which case the plea may be entered by counsel or a corporate officer; or
- (2) There is a waiver of arraignment and a filing of a written plea of not guilty under G.S. 15A-945; or
- (3) In misdemeanor cases there is a written waiver of appearance submitted with the approval of the presiding judge; or
- (4) Written pleas in traffic cases are authorized under G.S. 7A-146(8); or
- (5) The defendant executes a waiver and plea of not guilty as provided in G.S. 15A-1011(d).
- (6) The defendant, before a magistrate or clerk of court, enters a written appearance, waiver of trial and plea of guilty and at the same time makes restitution in a case wherein the sole allegation is a violation of G.S. 14-107, the amount of the check is three hundred dollars (\$300.00) or less, and the warrant does not charge a fourth or subsequent violation of this statute.

(b) A defendant may plead no contest only with the consent of the prosecutor and the presiding judge.

(c) Upon entry of a plea of guilty or no contest or after conviction on a plea of not guilty, the defendant may request permission to enter a plea of guilty or no contest as to other crimes with which he is charged in the same or another judicial district. A defendant may not enter any plea to crimes charged in another judicial district unless the district attorney of that district consents in writing to the entry of such plea. The prosecutor or his representative may appear in person or by filing an affidavit as to the nature of the evidence gathered as to these other crimes. Entry of a plea under this subsection constitutes a waiver of venue. A superior court is granted jurisdiction to accept the plea, upon an appropriate indictment or information, even though the case may otherwise be within the exclusive original jurisdiction of the district court. A district court may accept pleas under this section only in cases within the original jurisdiction of the district court.

(e) In the event the judge shall permit the procedure set forth in the foregoing subsection (d), the State may offer evidence and the defendant may offer evidence, with right of cross-examination of witnesses, and the other procedures, including the right of the prosecutor to dismiss the charges, shall be the same as in any other criminal case, except for the absence of defendant. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; c. 626, s. 1.)

Editor's Note. — The first 1975 amendment, effective Sept. 1, 1975, substituted “prosecutor” for “solicitor” and “district attorney” for “district solicitor” in subsections (b), (c) and (e).

The second 1975 amendment, effective Sept. 1, 1975, added subdivision (6) to subsection (a).

As subsection (d) was not changed by the amendment, it is not set out.

ARTICLE 58.

Procedures Relating to Guilty Pleas in Superior Court.

§ 15A-1021. Plea conference; improper pressure prohibited; submission of arrangement to judge. — (a) In superior court, the prosecution and the defense may discuss the possibility that, upon the defendant's entry of a plea of guilty or no contest to one or more offenses, the solicitor will not charge, will dismiss, or will move for the dismissal of other charges, or will recommend or not oppose a particular sentence. If the defendant is represented by counsel in the discussions the defendant need not be present. The trial judge may participate in the discussions.

(1975, c. 117.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, deleted "not" between "may" and "participate" in the last sentence of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 15A-1027. Limitation on collateral attack on conviction. — Noncompliance with the procedures of this Article may not be a basis for review of a conviction after the appeal period for the conviction has expired, unless the review is expressly authorized by G.S. 15-217. (1973, c. 1286, s. 1; 1975, c. 166, s. 21.)

Editor's Note. — The 1975 amendment, effective Sept. 1, 1975, deleted "required"

preceding "expressly authorized" near the end of the section.

Chapter 17.

Habeas Corpus.

ARTICLE 2.

Application.

§ 17-6. To judge of appellate division or superior court in writing.

Applied in *In re Custody of Cox*, 24 N.C. App. 99, 210 S.E.2d 223 (1974).

Chapter 17A.

Law-Enforcement Officers.

Sec.

17A-6. Powers of Council; appointment of director.

§ 17A-6. Powers of council; appointment of director. — (a) In addition to powers conferred upon the Council elsewhere in this Chapter, the Council shall have the power to:

- (1) Promulgate rules and regulations for the administration of this Chapter including the authority to require the submission of reports and information by criminal justice agencies and departments within this State relevant to employment, education and training.
- (2) Establish minimum educational and training standards for employment as a criminal justice officer: (i) in temporary or probationary status, and (ii) in permanent positions.
- (3) Certify persons as being qualified under the provisions of this Chapter to be criminal justice officers.
- (4) Consult and cooperate with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of criminal justice training schools and programs or courses of instruction.
- (5) To establish minimum standards and levels of education or equivalent experience for all criminal justice instructors, teachers or professors.
- (6) Conduct and stimulate research by public and private agencies which shall be designed to improve education and training in the administration of criminal justice.
- (7) Make recommendations concerning any matters within its purview pursuant to this Chapter.
- (8) Repealed by Session Laws 1975, c. 372, s. 2.
- (9) Appoint such advisory committees as it may deem necessary.
- (10) Make such evaluations as may be necessary to determine if governmental units are complying with the provisions of this Chapter.
- (11) Adopt and amend bylaws, consistent with law, for its internal management and control.
- (12) Enter into contracts and do such things as may be necessary and incidental to the administration of its authority pursuant to this Chapter.

(b) The Attorney General shall appoint a director from a list of three names recommended to him by the Council. If, in the opinion of the Attorney General, none of the three persons recommended have the necessary qualifications for the position of director, the Council shall submit another list of three names, from which the Attorney General shall appoint a director. The director shall be responsible to and shall serve at the pleasure of the Attorney General. (1971, c. 963, s. 6; 1975, c. 372, s. 2.)

Editor's Note. — The 1975 amendment substituted the provision codified as subsection (b) in the section as set out above for former subdivision (8), which authorized the Council to employ a director and other personnel. Because the new provision, enacted as a revised subdivision (8), does not follow either logically

or grammatically the introductory language of the section, the codifiers have designated the original provisions of this section as subsection (a), treated former subdivision (8) as repealed, and designated the new subdivision added by the 1975 act as subsection (b).

Chapter 17B.**North Carolina Criminal Justice Education and Training System.**

Sec.

17B-4. North Carolina Criminal Justice
Education and Training System
Council — organization.

§ 17B-4. North Carolina Criminal Justice Education and Training System Council — organization. — (a) Membership. — The North Carolina Criminal Justice Education and Training System Council shall be composed of 41 members as follows:

- (1) Four representatives of sheriffs' departments, one of whom shall be selected by the North State Law Enforcement Officers' Association and three selected by the North Carolina Sheriffs' Association.
 - (2) Four representatives of police departments, one of whom shall be selected by the North State Law Enforcement Officers' Association and three selected by the North Carolina Association of Police Executives.
 - (3) Two county commissioners selected by the North Carolina Association of County Commissioners.
 - (4) Two mayors selected by the North Carolina League of Municipalities.
 - (5) One criminal justice educator selected by the North Carolina Association of Criminal Justice Education.
 - (6) One law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association.
 - (7) Five civilian members at large to be selected by the Governor from the general private sector.
 - (8) One superior court judge, one district court judge and one district attorney of the General Court of Justice, each of these individuals to be selected by the members of their respective groups in general meeting assembled.
 - (9) The Attorney General, the Director of the Administrative Office of the Courts, the Secretary of Correction, the Director of Prisons, the Director of Jail and Detention Services, the Director of Adult Probation and Parole, the Director of Youth Development, the Director of the State Bureau of Investigation, the Commissioner of Motor Vehicles, the Commander of the State Highway Patrol, the Executive Director of the Wildlife Resources Commission, the Commissioner of Commercial and Sports Fisheries, the Chairman of the State Board of Alcoholic Control, the Coordinator of the Governor's Highway Safety Program, the President of Community Colleges of the Department of Education, and the Director of the Institute of Government, all of whom shall serve ex officio.
 - (10) One member of the North Carolina Senate to be appointed by the Lieutenant Governor; one member of the North Carolina House of Representatives to be appointed by the Speaker of the House; and one member from the public at large to be selected by the Attorney General. The initial appointments shall be made prior to July 1, 1975 and the term of successors shall begin on July 1 of each year thereafter.
- (1975, c. 227; c. 658, ss. 1, 2.)

Editor's Note. —

The first 1975 amendment, in subdivision (9) of subsection (a), inserted "Director of Prisons" preceding "the Director of Jail and Detention

Services" and substituted "Director of Adult Probation and Parole, the Director of Youth Development" for "Secretary of Correction, the Secretary of Correction, the Secretary of

Correction" and "Commissioner of Commercial and Sports Fisheries" for "Secretary of Natural and Economic Resources."

The second 1975 amendment substituted "41 members" for "38 members" in the introductory

paragraph of subsection (a) and added subdivision (10) of subsection (a).

As the rest of the section was not changed by the amendments, only subsection (a) is set out.

Chapter 18A.

Regulation of Intoxicating Liquors.

Article 1.

General Provisions.

Sec.

18A-2. Definitions.

18A-3. Manufacture, sale, etc., forbidden except as expressly authorized.

Article 2.

A.B.C. Boards and Enforcement.

Part 1. A.B.C. Boards.

18A-15. Powers and authority of State Board.

18A-18. Salaries and expenses; net profits.

Article 3.

Sale, Consumption, Possession and Transportation of Alcoholic Beverages.

18A-28. Transportation of up to five gallons of alcoholic beverages.

18A-29. Commercial transportation of spirituous liquors.

18A-31.1. Permits to keep and use alcoholic beverages for culinary purposes.

Article 4.

Malt Beverages and Wine.

Part 1. Retail Sales and Personal Use.

Sec.

18A-35.1. Storage, possession and consumption of wine.

Part 1A. Commercial Wineries.

18A-36.1. Commercial wineries.

Part 2. Permits.

18A-37. Permit and license required.

18A-38. Power of State Board of Alcoholic Control to issue permits.

18A-39. Application for permit; contents and fees.

18A-41. Permits for commercial transportation of malt beverages and wine (fortified and unfortified).

18A-42. Salesman's permit.

18A-44.1. Location of hearing.

ARTICLE 1.

General Provisions.

§ 18A-2. Definitions. — When used in this Chapter:

(2) "Fortified wines" shall mean any wine made by fermentation from grapes, fruits, berries, rice or honey to which nothing but pure brandy has been added, which brandy is made from the same type of grape, fruit, berry, rice or honey that is contained in the base wine to which it is added, and having an alcoholic content of over fourteen percent (14%) and not more than twenty-one percent (21%) of absolute alcohol reckoned by volume; and is approved by the State Board of Alcoholic Control as to identity, quality, and purity as provided in this Chapter.

(8a) The term "passenger area of a motor vehicle" shall mean that area designed for the seating of the driver and passengers as well as any area that can be within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatch-back or similar vehicle, that area to the rear of the last back seat shall not constitute part of the passenger area.

(1975, c. 329; c. 411, s. 2.)

Editor's Note. —

The first 1975 amendment added subdivision (8a).

The second 1975 amendment inserted the references to honey near the beginning of subdivision (2) and made other minor changes in wording in subdivision (2).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (2) and (8a) are set out.

§ 18A-3. Manufacture, sale, etc., forbidden except as expressly authorized.

— (a) No person shall manufacture, sell, barter, transport, import, export, deliver, furnish, purchase, or possess any intoxicating liquor except as authorized in this Chapter or in Chapter 105, Article 2C.

(b) No person who does not have an appropriate permit and license (as defined in this Chapter) shall have any intoxicating liquor mailed or shipped to him from outside this State. (1923, c. 1, s. 2; C. S., s. 3411(b); 1971, c. 872, s. 1; 1975, c. 654, s. 4.)

Editor's Note. — The 1975 amendment added "or in Chapter 105, Article 2C" at the end of subsection (a).

§ 18A-7. Keeping liquor for sale; evidence.

Applied in *State v. Edwards*, 286 N.C. 162, 209 S.E.2d 758 (1974).

ARTICLE 2.***A.B.C. Boards and Enforcement.*****Part 1. A.B.C. Boards.**

§ 18A-15. Powers and authority of State Board. — The State Board of Alcoholic Control shall have power and authority as follows:

- (1) To see that all the laws relating to the sale and control of intoxicating liquor are observed and performed.
- (2) To audit and examine the accounts, records, books, and papers relating to the operation of county and municipal stores or to have the same audited.
- (3) a. To fix the retail price of each bottle of alcoholic beverages sold in the county and municipal A.B.C. stores at such levels as shall promote the temperate use of these beverages and as may facilitate policing, which price shall be uniform throughout the State;
- b. To compute the taxes levied by G.S. 105-113.93 and 105-113.94 on the retail prices of spirituous liquors so fixed;
- c. To add to said retail price:
 1. An amount equal to three and one-half per cent (3½%) of said retail price of spirituous liquors; and
 2. One cent (1¢) per bottle on each bottle of alcoholic beverages containing two ounces or less sold in said county and municipal A.B.C. stores and five cents (5¢) per bottle on each bottle of alcoholic beverages containing more than two ounces sold in said stores; the sum of the retail price plus the foregoing additions thereto being the established price for each such bottle of alcoholic beverages. The foregoing additions to retail price shall not be subject to the tax levied by G.S. 105-113.93 and 105-113.94. The clear proceeds of the three and one-half per cent (3½%) addition to the retail price of spirituous liquors shall be retained by the respective county or municipal A.B.C. boards in the same manner as other profits derived from the sale of spirituous liquors. The clear proceeds of the one cent (1¢) and five cents (5¢) per bottle addition to retail price shall be remitted to the county commissioners of the county in which such additions to retail price were collected, accompanied by

forms or reports to be prescribed and furnished by the State Board of Alcoholic Control, which remittances shall be spent in the discretion of the county commissioners only for projects for construction, maintenance and operation of facilities for education, research, treatment or rehabilitation of alcoholics. In connection with such projects and programs, the county commissioners, or such agencies as are by them designated, shall also have the authority to use said funds to purchase or lease real and personal property, and to renovate, remodel, furnish and equip buildings as and when required for the operation of such projects and programs. The funds may also be used for programs of education and research on problems of alcoholism and the treatment and rehabilitation of alcoholics. The county commissioners are hereby empowered to spend the funds for a project not located in the county but which benefits the citizens of the county. The Department of Human Resources and the State Department of Public Instruction are hereby empowered to enact guidelines for the expenditure of such funds by county commissioners and the county commissioners may expend the funds pursuant to those guidelines. Reports and remittances of the aforesaid additions to retail price shall be made monthly by the local boards on or before the fifteenth day of the next succeeding month.

- d. To determine the total prices of all such alcoholic beverages, which total price shall be the sum of the established price plus the taxes levied by G.S. 105-113.93 and 105-113.94, and to notify the stores periodically of such prices.
- (4) To remove any member, or members, of county and municipal boards whenever in the opinion of the State Board such member, or members, of the county or municipal board, or boards, may be unfit to serve thereon.
- (5) To test any and all alcoholic beverages that may be sold, or proposed to be sold, to the county or municipal stores, and to install and operate such apparatus, laboratories, or other means or instrumentalities and employ to operate the same such experts, technicians, employees and laborers as may be necessary to operate the same, in accordance with the opinion of the Board. In lieu of establishing and operating laboratories as above directed, the Board may, with the approval of the Governor and the Commissioner of Agriculture, arrange with the State Chemist to furnish such information and advice and to perform such analyses and other laboratory services as the Board may consider necessary, or they may, if they deem advisable, cause such tests to be made otherwise.
- (6) To supervise purchasing by the county and municipal boards when the State Board is of the opinion that it is advisable for it to exercise such power in order to carry into effect the purpose and intent of this Chapter, with full power to disapprove any such purchase. At all times it shall have the right to inspect all invoices, papers, books, and records in the county or municipal stores or boards relating to purchases.
- (7) To exercise the power to approve or disapprove in its discretion all regulations adopted by the several county and municipal stores for the operation of said stores and the enforcement of alcoholic beverage control laws which may be in violation of the terms or spirit of this Chapter.

- (8) To require that a sufficient amount be so allocated as to insure adequate enforcement; the amount shall in no instance be less than five percent (5%) nor more than ten percent (10%) of the net profits arising from the sale of alcoholic beverages.
- (9) To remove, in case of violation of the terms or spirit of this Chapter, officers employed, elected, or appointed in the several counties and municipalities where stores may be operated.
- (10) To approve or disapprove, in its discretion, the opening and location of county and municipal stores; provided that in the location of control stores in any county in which a majority of the votes have been cast for liquor control stores, no store or stores shall be located in any community or town in which a majority of the votes cast were against control; provided further, however, that stores may be located in such communities and towns if and when as many as twenty percent (20%) of the qualified voters therein by petition, at any time after 18 months since the last election on such question, have requested the location of such a store or stores in such communities or towns and the State Board has found, upon due investigation after receipt of such petition, that a majority of the qualified electors in such community or town are at the time such investigation is made in favor of establishing such store or stores. Each county and municipality that may be entitled to operate stores for the sale of alcoholic beverages shall be entitled to operate at least one store for such purpose. No additional stores in each of said counties and municipalities shall be opened until and unless their opening and their place of location shall first be approved by the State Board, which at any time may withdraw its approval of the operation of any additional county or municipal store when the store is not operated efficiently and in accordance with the alcoholic beverage control laws and all valid regulations prescribed therefor, or whenever, in the opinion of the State Board, the operation of any county or municipal store shall be inimical to the morals or welfare of the community in which it is operated or for such other cause, or causes, as may appear to the State Board sufficient to warrant the closing of any county or municipal store.
- (11) To require the use of a uniform accounting system in the operation of all county and municipal stores hereunder and to provide in said system for the keeping therein and the record of all such information as may, in the opinion of the said State Board, be necessary or useful in its auditing of the affairs of the said county and municipal stores, as well as in the study of such problems and subjects as may be studied by said State Board in the performance of its duties.
- (12) To grant, to refuse to grant, or to revoke permits for any person, firm, or corporation to do business in North Carolina in selling alcoholic beverages to or for the use of any county or municipal store and to provide and to require that such information be furnished by such person, firm, or corporation as a condition precedent to the granting of such permit, or permits, and to require the furnishing of such data and information as it may desire during the life of such permit, or permits, and for the purpose of determining whether such permit, or permits, shall be continued, revoked, or regranted after expiration dates. No permit, however, shall be granted by the State Board to any person, firm, or corporation when the State Board has reason sufficient unto itself to believe that such person, firm, or corporation has furnished to it any false or inaccurate information or is not fully, frankly, and honestly cooperating with the State Board and the several county and municipal boards in observing and performing all liquor

laws that may now or hereafter be in force in this State, or whenever the Board shall be of opinion that such permit ought not to be granted or continued for any cause. Upon the granting of a permit in accordance with this Chapter, the State Board of Alcoholic Control shall notify the county sheriff and county tax collector, and if applicable, the city chief of police and city tax collector, as well as the county alcoholic beverage control officer, whenever an alcoholic beverage control permit of any type is issued within the respective county and/or city.

- (13) On or before June 30, 1975, and thereafter to provide for the receipt, storage and distribution of spirituous liquors by negotiated contract or by use of the procedures for purchase and contract of property by State agencies with a privately-owned warehouse in the Raleigh area or, alternatively and by the same procedure, with privately-owned warehouses in the several regions of the State which in the discretion of the Board would promote efficient distribution of spirituous liquors to the local boards of alcoholic control and maintain control of such beverages and the Board's supervision thereof. The State Board of Alcoholic Control shall provide for such warehousing and distribution through contracts or subleases with independent contractors, except that the State Board shall have the power and authority to operate such warehouses on an interim emergency or temporary basis pursuant to a change in independent operator or for some condition substantially impeding distribution of spirituous liquors from the warehouse. The Board shall prescribe such rules and regulations as they deem necessary for the receipt, storage and distribution of such beverages and violation of such rules and regulations shall be grounds for termination of a contract upon reasonable notice by the Board. The contract or contracts entered into pursuant to this subdivision shall provide for an annual audited financial statement, shall provide that the records of the warehouse or warehouses be available for inspection at all times by the State Board of Alcoholic Control and the Department of Revenue and shall provide that the accounts of the warehouse or warehouses regarding the receipt, storage and distribution of spirituous liquors be subject to audit by the State Auditor.
- (14) To adopt, amend, or repeal reasonable rules and regulations for the purpose of carrying out the provisions of this Chapter, but not inconsistent herewith, which rules and regulations shall become effective when filed as provided by law.
- (15) To appoint or commission A.B.C. officers, hearing officers, and other enforcement personnel authorized by Part 2 of this Article.
- (16) The Board is authorized to dispose of damaged liquors belonging to the Board by selling it to public or private hospitals to be used only for medicinal purposes, or by sale to military installations or by destroying such liquors as the Board may deem best. Sale shall be by:
- a. Advertisement for sealed bids;
 - b. Negotiated offer, advertisement, and upset bids;
 - c. Public auction; or
 - d. Exchange.

Complete detailed records of such disposal shall be maintained by the Board showing the brand, amount and disposition. Any funds derived from such liquors shall be paid into the warehouse bailment fund.

- (17) To provide for the storage and transportation of alcoholic beverages for special occasions for a period of 48 hours prior to and following a special occasion by regulation and by the issuance of permits needed for control of such storage and transportation; provided, however, the

transportation of alcoholic beverages shall be limited to five gallons at any one time.

The State Board shall have all other powers which may be reasonably implied from the granting of express powers herein named, together with such other powers as may be incidental to, or convenient for, carrying out and performing the powers and duties herein given to the Board. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640.)

Editor's Note. —

The first 1975 amendment added the fifth sentence in paragraph c 2 of subdivision (3).

The second 1975 amendment substituted "spirituous liquors" for "alcoholic beverages" throughout subdivision (13).

The third 1975 amendment, effective July 1, 1975, added subdivision (17).

Power of Investigation. — The Board of Alcoholic Control can conduct, without traditional probable cause, an investigation of a distillery representative's books and records pertaining to promotional activities in North Carolina for his employer. *Myers v. Holshouser*, 25 N.C. App. 683, 214 S.E.2d 630 (1975).

The investigative demand must be reasonable and specific in directive so that compliance is not unreasonably burdensome. *Myers v. Holshouser*, 25 N.C. App. 683, 214 S.E.2d 630 (1975).

The information sought must be relevant to a lawful subject of investigation. *Myers v. Holshouser*, 25 N.C. App. 683, 214 S.E.2d 630 (1975).

The purpose of an administrative investigation is to protect the public; therefore, the public's interest in applying more relaxed criteria for administrative investigations is greater than the regulated person's, firm's or corporation's right to privacy. *Myers v. Holshouser*, 25 N.C. App. 683, 214 S.E.2d 630 (1975).

§ 18A-17. Powers and duties of county boards.

Local Modification. — Wilson County A.B.C. Board, as to subdivision (14): 1975, c. 774; City of Cherryville, as to subdivision (14): 1975, c. 114.

§ 18A-18. Salaries and expenses; net profits.

(b) After deducting the amount required to be expended for enforcement, education and rehabilitation, as herein provided, and retaining sufficient and proper working capital, the amount to be determined by the board, and except as hereinbefore provided in Chapters 493 and 418 of the Public Laws of 1935, the entire net profits derived from any stores shall be paid quarterly to the general fund of each respective county wherein county stores are operated. (1937, c. 49, ss. 20, 21; c. 411; 1971, c. 872, s. 1; 1975, c. 411, s. 3.)

The Board of Alcoholic Control is not required to have evidence that petitioner has violated its rules and regulations before it undertakes an investigation of him. *Myers v. Holshouser*, 25 N.C. App. 683, 214 S.E.2d 630 (1975).

An administrative agency, in this case the Board of Alcoholic Control, is empowered to conduct inquiries to whatever extent is reasonably necessary to make the power of investigation effective. *Myers v. Holshouser*, 25 N.C. App. 683, 214 S.E.2d 630 (1975).

The Board, even if it has no probable cause, may require a distillery representative to produce relevant business books and records without abridging his constitutional rights under the Fourth Amendment. *Myers v. Holshouser*, 25 N.C. App. 683, 214 S.E.2d 630 (1975).

Subsection (12) requires the Board of Alcoholic Control to give notice and an opportunity to be heard to the applicant or permittee before a permit is refused or revoked for failure to produce records as ordered by the Board. *Myers v. Holshouser*, 25 N.C. App. 683, 214 S.E.2d 630 (1975).

A license to engage in a business or practice a profession is a property right that cannot be suspended or revoked without due process of law. *Myers v. Holshouser*, 25 N.C. App. 683, 214 S.E.2d 630 (1975).

Editor's Note. — The 1975 amendment inserted "education and rehabilitation" near the beginning of subsection (b). As subsection (a) was not changed by the amendment, it is not set out.

Part 2. Enforcement.

§ 18A-23: Repealed by Session Laws 1973, c. 1286, s. 26, effective September 1, 1975.

Editor's Note. — Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

ARTICLE 3.

Sale, Consumption, Possession and Transportation of Alcoholic Beverages.

§ 18A-28. **Transportation of up to five gallons of alcoholic beverages.** — (a) It shall be lawful to purchase, possess, and transport up to five gallons of alcoholic beverages in containers not smaller than one-fifth gallon from a county or municipal A.B.C. store to a named destination within the county or counties adjacent thereto; provided, the purchaser has in his possession a "purchase-transportation permit" and complies strictly with the provisions of this section, and provided further that said alcoholic beverages are not being transported for the purpose of sale and that the cap or seal on the container or containers of said alcoholic beverages has not been opened or broken.

(d) The permit herein authorized shall be valid for only one purchase, and it shall expire at 9:30 P.M. of the date shown thereon. No purchase based on this permit shall be made from any A.B.C. store except the store named on the permit. One copy of the permit shall be retained by the permittee. The permit shall authorize the permittee to transport the alcoholic beverages from the place of purchase to the destination indicated thereon. The permit must accompany the merchandise during transit and both the merchandise and the permit must be exhibited to any law-enforcement officer upon request.

(e) The chairman or any member of a local county or municipal board or the general manager or supervisor of a local alcoholic control board is authorized to issue purchase-transportation permits. Provided further, that the manager and the assistant manager of any alcoholic control store may issue such permits if authorized in writing by the chairman of said board to do so.

(f) Permits to be used shall be in the form substantially as follows:

ALCOHOLIC BEVERAGE CONTROL BOARD

..... County
....., North Carolina
Date, 19

PURCHASE-TRANSPORTATION PERMIT

(not to exceed five gallons)

Name of Purchaser
Address
A.B.C. Store No. Address of the Store
Destination
Route to Be Used

Signed
(Person authorized to issue)
Board Member

Note: This permit is valid for only one purchase and it shall expire at 9:30 P.M. of the date shown above. Special Note: This permit must accompany the merchandise while in transit. Both the merchandise and the permit must be exhibited to any law-enforcement officer upon request.

(1975, c. 622, ss. 1-4.)

Editor's Note. —

The 1975 amendment inserted "or counties adjacent thereto" near the middle of subsection (a), substituted "9:30 P.M." for "6:00 P.M." in the first sentence of subsection (d) and in the

first note to the form of permit in subsection (f) and added the second sentence of subsection (e).

As the rest of the section was not changed by the amendment, only subsections (a), (d), (e) and (f) are set out.

§ 18A-29. Commercial transportation of spirituous liquors. — (a) The willful transportation of spirituous liquors within, into, or through the State of North Carolina in quantities in excess of one gallon (or five gallons with a permit) is prohibited except for delivery to federal reservations to which has been ceded exclusive jurisdiction by the State of North Carolina, for delivery to an A.B.C. store or board, or for transport through this State to another state. The State Board of Alcoholic Beverage Control may adopt further regulations governing the transportation of spirituous liquors within, into, and through the State of North Carolina for delivery to a federal reservation, A.B.C. stores or boards, or in transit through this State to another state, as it may deem necessary to confine such transportation to legitimate purposes, and may issue transportation permits in accordance with such regulations.

(b) Before any person shall transport over the roads and highways of this State any spirituous liquors in excess of one gallon (or five gallons with a permit) within, into, or through the State of North Carolina for delivery to a federal reservation exercising exclusive jurisdiction, or in transit through this State to another state, he shall post with the State Board of Alcoholic Beverage Control a bond with surety approved by the Board, payable to the State of North Carolina in the penal sum of one thousand dollars (\$1,000), running in the name of the State of North Carolina, conditioned that such person will not unlawfully transport or deliver any spirituous liquors within, into, or through the State of North Carolina. In case of conviction, the forfeiture shall be paid to the school fund of the county in which the seizure is made, and any such county shall have the right to sue for the same. When such spirituous liquors are desired to be transported within, into, or through the State of North Carolina, the transportation shall be engaged in only under the following conditions:

- (1) Statement as to Bond and Bill of Lading Required. — There shall accompany such spirituous liquors a statement signed by the Chairman of the State Board of Alcoholic Beverage Control showing that the bond hereinbefore required has been furnished and approved. There shall accompany such spirituous liquors at all times during transportation a bill of lading or other memorandum of shipment signed by the consignor showing an exact description of the spirituous liquors being transported, the name and address of the consignee, and the route to be traveled by the vehicle while in the State of North Carolina; this route must be substantially the most direct route from the consignor's place of business to the place of business of the consignee.
- (2) Route Stated in Bill of Lading to Be Followed. — Vehicles transporting spirituous liquors shall not substantially vary from the route specified in the bill of lading or other memorandum of shipment.
- (3) Names of True Consignor and Consignee Must Appear. — The name of the consignor on any such bill of lading or other memorandum of shipment shall be the name of the true consignor of the spirituous liquors being transported, and such consignor shall be only a person

who has a legal right to make such shipment. The name of the consignee on any such bill of lading or memorandum of shipment shall be the name of the true consignee of the spirituous liquors being transported and who had previously authorized in writing the shipment of the spirituous liquors being transported and who has a legal right to receive such spirituous liquors at the point of destination shown on the bill of lading or other memorandum of shipment.

- (4) **Officers May Require Driver to Exhibit Papers.** — The driver or any person in charge of any vehicle so transporting such spirituous liquors shall, when required by any sheriff, deputy sheriff, or other peace officer having the power to make arrests, exhibit to such officer such papers or documents required by this law to accompany such shipment.

(c) Notwithstanding any provision of law contained in this Chapter or in Article 2C of Chapter 105 of the General Statutes, spirituous liquors may be imported into North Carolina under United States customs bonds and may be held in North Carolina in United States customs bonded warehouses. Spirituous liquors may be removed from any such United States customs bonded warehouse, wherever situated within the State, to any other such warehouse located in the State and be held in the State. Such spirituous liquors so imported or removed to such warehouses in North Carolina shall be released from customs bonds in North Carolina only on permits issued by the State Board of Alcoholic Control for delivery to oceangoing vessels which ply the high seas in interstate or foreign commerce, in the transport of freight or passengers, or both, for hire exclusively, when delivered to officers or agents of such vessels for use or consumption on such vessels. Provided, the Board shall have the authority to issue permits as referred to in this subsection and shall have the power and authority to promulgate rules and regulations to control the release of said spirituous liquors from United States customs bonded warehouses and the delivery of same to oceangoing vessels. (1945, c. 457, ss. 1, 2; 1965, c. 1102, s. 4; 1971, c. 872, s. 1; 1975, c. 411, s. 5; c. 586, s. 2.)

Editor's Note. — The first 1975 amendment substituted "spirituous liquors" for "alcoholic beverages" throughout subsections (a) and (b).

The second 1975 amendment, effective July 1, 1975, added subsection (c).

§ 18A-31.1. Permits to keep and use alcoholic beverages for culinary purposes. — (a) Notwithstanding the provisions of G.S. 18A-30, the State A.B.C. Board may grant to restaurants holding a Grade A rating from the Commissioner for Health Services [Department of Human Resources], a permit which will enable them to keep in the kitchen of the restaurant, alcoholic beverages for culinary purposes only, provided each such restaurant regularly serves foods in which such beverages are used, and provided that these alcoholic beverages are obtained from a lawful source within the State. The State A.B.C. Board may adopt, amend or repeal such regulations as it may deem necessary to carry out the purpose of this section as provided in G.S. 18A-43, and shall require the permittee to retain all receipts and records of alcoholic beverages purchased with the quantities purchased not exceeding a reasonable amount for culinary purpose intended herein. No more than three gallons of alcoholic beverages may be possessed by any restaurant, and it shall be kept in the kitchen or storage area. Nothing contained in this section shall be construed to permit the sale of Irish coffee or any other beverage containing any spirituous liquor whatsoever.

(b) Application for a culinary permit shall be accompanied with a fee of fifty dollars (\$50.00) which shall not be refundable in case a permit is refused, suspended, or revoked. No additional fees or licenses shall be collected by any county or municipality under this section, and the fees collected by the State

A.B.C. Board shall be deposited with the State Treasurer of North Carolina. The annual renewal fee for such permit shall be twenty-five percent (25%) of the original permit. (1975, c. 680.)

ARTICLE 4.

Malt Beverages and Wine.

Part 1. Retail Sales and Personal Use.

§ 18A-35. Transportation and possession of malt beverages and unfortified wine; out-of-state purchases.

Cited in *Greene v. City of Winston-Salem*, 287 N.C. 66, 213 S.E.2d 231 (1975).

§ 18A-35.1. Storage, possession and consumption of wine. — Those beverages defined in G.S. 18A-2(5) and (14) may be possessed, consumed, and stored in those places listed in 18A-30(2) in the same manner and under the same terms and conditions as alcoholic beverages. (1975, c. 700.)

Part 1A. Commercial Wineries.

§ 18A-36.1. Commercial wineries.

(c) A commercial winery is authorized to grow crops, purchase crops and other materials, manufacture, possess and transport wine without limitation as to quantity except that any wine in transport shall be subject to the provisions of G.S. 18A-41.

(1975, c. 411, s. 6.)

Editor's Note. — The 1975 amendment substituted "G.S. 18A-41" for "subdivisions (1) through (4) of G.S. 18A-29(b)" in subsection (c). As the rest of the section was not changed by the amendment, only subsection (c) is set out.

Part 2. Permits.

§ 18A-37. Permit and license required. — Malt beverages and wine (fortified and unfortified) may be manufactured, bottled or sold in this State only after the person desiring to engage in such activity has acquired an appropriate permit from the State Board of Alcoholic Control as provided in this Article, and has secured the license or licenses required by Article 2C, Subchapter I, Chapter 105 of the General Statutes.

Permits for salesmen for a wholesale distributor of malt beverages or wine (fortified or unfortified) and permits for the retail and wholesale sale of malt beverages and wine shall continue until voluntarily surrendered to the Board, or until suspended or revoked by the Board, or in the event of change of location, change of ownership, or death of the owner.

All other permits shall be for a period of one year unless sooner revoked or suspended and shall expire on April 30 of each year.

The State Board of Alcoholic Control shall arrange to computerize the files for permits as soon as feasible and once computerized shall retain a permanent number for each permit.

No permit issued under this Chapter shall be transferable. When the ownership of any business to which a permit has been issued changes by merger, consolidation or otherwise, the permit shall automatically be terminated and returned immediately to the State Board of Alcoholic Control.

A change in ownership does not occur simply from the exchange or sale of stock unless a stockholder acquires more than twenty-five percent (25%) of the stock and such acquiring stockholder has not previously held twenty-five percent (25%) of the stock of the corporation. (1971, c. 872, s. 1; 1975, c. 330, s. 1; c. 411, s. 4.)

Editor's Note. — The first 1975 amendment substituted “and” for “or” in the parenthesis near the beginning of the first paragraph, substituted “Article 2C, Subchapter I, Chapter 105 of the General Statutes” for “Article 2C of Chapter 105” at the end of the first paragraph, added the present second paragraph, inserted “other” and substituted “revoked or suspended”

for “suspended or revoked” in the present third paragraph, deleted the former last paragraph, which made the provisions of this Article applicable to permits issued under Article 3 of this Chapter, and added the present last paragraph.

The second 1975 amendment added the last two paragraphs of the section.

§ 18A-38. Power of State Board of Alcoholic Control to issue permits. —

(a) The State Board of Alcoholic Control shall be referred to herein as “the Board.” The Board shall have the sole power, in its discretion, to determine the fitness and qualifications of an applicant for a permit to sell, manufacture, or bottle malt beverages or wine (fortified and unfortified). The Board shall inquire into the character of the applicant and the location, general appearance, and type of place of business of the applicant. The Board, in addition to all powers now conferred upon it by law, is hereby vested with additional powers to regulate the distribution and sale of wine (fortified and unfortified) and malt beverages as follows:

(1) Permits issued to wineries, importers and wholesalers shall be as follows:

- a. Unfortified winery permits shall authorize the permittee to manufacture unfortified wines and to sell and deliver or ship the same in accordance with the regulations of the Board, in bottles or other closed containers to persons permitted under the provisions of this Chapter and Article 2C of Chapter 105 to sell at wholesale. A holder of an unfortified winery permit may sell unfortified wine to nonresident wholesalers when the purchase is not for resale in this State.
- b. Fortified winery permits shall authorize the permittee to manufacture, purchase, import, and transport brandy and other ingredients and equipment used in the manufacture of fortified wines. A permittee holding a fortified winery permit may manufacture fortified wines and sell and deliver or ship the same in accordance with the regulations of the Board in bottles, or other permitted closed containers to persons authorized under the provisions of this Chapter to sell at wholesale. The permittee may also sell fortified wine to nonresident wholesalers when the purchase is not for resale in this State.
- c. Limited Winery Permits. — A resident winery holding an unfortified winery permit may also obtain a limited winery permit from the State Board of Alcoholic Control provided that the winery produces its wines principally from honey, grapes or other fruit grown in North Carolina. A limited winery permit shall authorize the permittee to provide visitors with samples for tasting free of charge subject to the rules and regulations of the State Board of Alcoholic Control and the North Carolina Department of Revenue.
- d. Wine importers permits authorize the permittee to import wines from outside the United States in bottles, or other closed containers

to warehouse, and sell the same at wholesale for purposes of resale.

- e. Wholesale unfortified wine permits authorize the permittee to acquire and receive delivery shipments of unfortified wine and to sell and deliver or ship the same in accordance with regulations of the Board, in bottles or other closed containers, approved by the Board, to persons licensed under the provisions of this Chapter to sell the same at wholesale or retail for purposes of resale. An unfortified wine wholesaler may furnish and sell unfortified wine to his employees subject to the regulations of the State A.B.C. Board and the North Carolina Department of Revenue.
 - f. Fortified wine wholesalers' permits shall authorize the permittee to possess, transport, warehouse and sell as a wholesaler, fortified wines in any county of the State provided such sales are to persons, firms or corporations that are licensed under the provisions of this Chapter and Chapter 105. A fortified wine wholesaler may furnish or sell fortified wine to his employees subject to the regulations of the State A.B.C. Board and the North Carolina Department of Revenue.
- (2) Permits issued to brewers, bottlers, importers and wholesalers shall be as follows:
- a. Brewery permits shall authorize the permittee to manufacture malt beverages, and sell them in barrels, bottles, or other closed containers, only to persons permitted under the provisions of this Article and Chapter 105 to sell at wholesale. The sale of malt beverages to nonresident wholesalers is authorized when the purchase is not for resale in this State. The sale of malt, hops and other ingredients used in the manufacture of malt beverages is hereby permitted and allowed.

A resident manufacturer of malt beverages may furnish or sell packages not conforming to the manufacturer's marketing standards or marketable malt beverage products to its employees for the sole use of said employees and members of their families, provided that appropriate North Carolina taxes have been paid or will be paid on these beverages. A resident manufacturer also may give its products to its employees and to its bona fide guests for consumption on its premises. Any sale or gift made by said manufacturer under this section shall not be construed as a retail or wholesale sale under any other provision of this Chapter or Article 2C of Chapter 105.

A resident manufacturer of malt beverages holding a permit under this section may receive malt beverages that are manufactured by him at some point outside this State, but within the United States, for transshipment to dealers in other states.

- b. Wholesale malt beverage permits authorize the permittee to acquire and receive deliveries and shipments of malt beverages and to sell and deliver or ship the same, in accordance with regulations of the Board, in barrels, bottles or other closed containers to persons licensed under the provisions of this Chapter to sell the same at wholesale or retail for purposes of resale. A malt beverage wholesaler may furnish or sell malt beverages to his employees for the sole use of said employees and members of their families, and, where the legal sale of such beverages is permitted, may furnish malt beverages to guests and nonpermit holders for promotional purposes, subject to regulations of the State A.B.C. Board.

- c. Bottlers' permits shall authorize the permittee to acquire and receive deliveries and shipments of malt beverages or wine (fortified and unfortified), in bottles or other closed containers and to bottle, sell and deliver or ship the same in accordance with regulations of the Board to persons permitted under the provisions of this Chapter to sell the same at wholesale for the purpose of resale.

A holder of a bottler's permit may furnish or sell packages not conforming to the manufacturer's marketing standards to its employees for the sole use of said employees and members of their families, provided such bottlers furnish only such substandard packages on which the appropriate taxes have been paid or will be paid. Any sale made to any employee of said bottler under this section shall not be construed as a retail or wholesale sale under any other provisions of this Chapter or Article 2C of Chapter 105.

- d. Malt beverage importers' permits authorize the permittee to import malt beverages from outside the United States in barrels, bottles, or other closed containers to warehouse and sell the same at wholesale for purposes of resale.

(b) The sale, distribution, soliciting orders for, or delivery of malt beverages or wine (fortified or unfortified) in this State without a permit shall be unlawful. The fact that any brewery or winery or any manufacturer or bottler of malt beverages or wine (fortified or unfortified) has applied for or obtained a permit under the provisions of this Article shall not be construed as domesticating said brewery, manufacturer, or bottler, and shall not be evidence for any other purpose that such brewery, manufacturer, or bottler is doing business in North Carolina.

(g) Notwithstanding any provision of law contained in this Chapter or in Article 2C of Chapter 105 of the General Statutes, it shall be lawful for any wholesaler or retailer in possession of a valid permit issued by the State Board of Alcoholic Control to sell and deliver malt beverages and wine (both fortified and unfortified) for use or consumption by or on oceangoing vessels which ply the high seas in interstate or foreign commerce, in the transport of freight or passengers, or both, for hire exclusively, when delivered to an officer or agent of such vessel. The State Board shall have authority to promulgate regulations and rules governing the sale and delivery of such malt beverages and wine including the authority to issue such permits as may be reasonably required by the State Board. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, added subsection (g).

The second 1975 amendment rewrote former subsection (b), which has been redesignated subdivision (2) of subsection (a) in the section as set out above, and added a new subsection (c), which has been redesignated (b) in the section as set out above.

The third 1975 amendment rewrote former subsection (a) as the introductory paragraph and subdivision (1) of subsection (a) in the section as set out above.

As the rest of the section was not changed by the amendments, only subsections (a), (b) and (g) are set out.

§ 18A-39. Application for permit; contents and fees. — (a) All resident bottlers, wineries, or manufacturers of malt beverages or wine (fortified or unfortified) and all resident wholesalers and retailers of malt beverages or wine (fortified or unfortified) shall file a written application for a permit with the State Board of Alcoholic Control, and in the application shall state under oath therein:

- (1) The name and residence of the applicant and the length of his residence within the State of North Carolina;
- (2) The particular place for which the license is desired, designating the same by street and number if practicable; if not, by such other apt description as definitely locates it; and the distance to the nearest church or public or private school from said place;
- (3) The name of the owner of the premises upon which the business licensed is to be carried on, and, if the owner is not the applicant, that such applicant is the actual and bona fide lessee of the premises;
- (4) That the place or building in which it is proposed to do business conforms to all laws of health and fire regulations applicable thereto, and is a safe and proper place or building;
- (5) That the applicant intends to carry on the business authorized by the permit for himself or under his immediate supervision and direction;
- (6) That the applicant has been a bona fide resident of this State for a period of at least one year immediately preceding the date of filing his application and that he is not less than 21 years of age; provided, that no provision of this Chapter or any rule or regulation adopted pursuant thereto shall be construed to prohibit a person who is 18 years of age or older from being a manager, employee or other person in charge of any establishment which has a license and permit for on- or off-premises sales of malt beverages or wine (fortified or unfortified);
- (7) The place of birth of applicant and, if a naturalized citizen, when and where naturalized;
- (8) That the applicant has not been convicted of, or entered a plea of guilty or nolo contendere to, a felony or other crime involving moral turpitude within the past three years; that the applicant's citizenship has been restored by the court if he has been so deprived of it; that he has not, within the two years next preceding the filing of the application, been adjudged guilty of violating the prohibition or liquor laws, either state or federal. It shall be within the discretion of the Board, after making investigation, to determine whether any person who has ever been convicted of, or entered a plea of guilty or nolo contendere to, a felony shall be deemed a suitable person to receive and hold a malt beverage or wine (fortified or unfortified) permit;
- (9) That the applicant has not during the three years next preceding the date of said application had any permit issuable hereunder, or any license issued to him pursuant to the laws of this State or any other state to sell intoxicating liquors of any kind, revoked;
- (10) That the applicant is not the holder of a federal special tax liquor stamp;
- (11) If the applicant is a firm, association, or partnership, the application shall state the matters required in subdivisions (6), (7), (8), and (9), with respect to each of the members thereof, and each of said members must meet all the requirements in said subdivisions provided;
- (12) If the applicant is a corporation, organized or authorized to do business in this State, the application shall state the matters required in subdivisions (7), (8) and (9), with respect to each of the officers and directors thereof, and any stockholder owning more than twenty-five percent (25%) of the stock of such corporation, and the person or persons who shall conduct and manage the licensed premises for the

corporation. Each of said persons must meet all the requirements in said subdivisions provided; provided, however, that the requirement as to residence shall not apply to said officers, directors, and stockholders of such corporation; however, such requirement shall apply to any such officer, director or stockholder, agent, or employee who is also the manager and in charge of the premises for which permit is applied, but the Board may, in its discretion, waive such requirement.

(1975, c. 19, s. 5.)

Editor's Note. —

The 1975 amendment corrected an error in the first 1973 amendatory act by substituting "or" for "of" following "Chapter" in the proviso to subdivision (6) of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

§ 18A-41. Permits for commercial transportation of malt beverages and wine (fortified and unfortified). — (a) Malt beverages and wine (fortified and unfortified) may be transported into, out of, or between points in this State by railroad companies, express companies, or steamboat companies engaged in public service as common carriers and having regularly established schedules of service upon condition that such companies shall keep accurate records of the character and volume of such shipments and the character and number of packages or containers and shall keep records open at all times for inspection by the State Board of Alcoholic Control and State A.B.C. officers, and upon condition that such common carriers shall make report of all shipments of such beverages into, out of, or between points in this State at such times and in such detail and form as may be required by the State Board of Alcoholic Control.

Malt beverages and wine (fortified and unfortified) may be transported into, out of, or between points in this State over the public highways of this State by motor vehicles upon condition that every person intending to make such use of the highways of this State shall as a prerequisite thereto register such intention with the State Board of Alcoholic Control in advance of such transportation, with notice of the kind and character of such products to be transported and the license and motor number of each motor vehicle intended to be used in such transportation. Upon the filing of such information, together with an agreement to comply with the provisions of this Chapter, the State Board of Alcoholic Control shall without charge therefor issue a numbered permit to each such owner or operator for each motor vehicle intended to be used for such transportation, which numbered permit shall be prominently displayed on the motor vehicle used in transporting malt beverages or wine (fortified and unfortified). Every person transporting such products over any of the public highways of this State shall during the entire time he is so engaged have in his possession an invoice or bill of sale or other record evidence showing the true name and address of the person from whom he has received such beverages, the character and contents of containers, the number of bottles, cases, or gallons of such shipment, and the true name and address of every person to whom deliveries are to be made. The person transporting such beverages shall, at the request of any State A.B.C. officer, produce and offer for inspection said invoice or bill of sale or record evidence. If said person fails to produce an invoice or bill of sale or record evidence, or if when produced, the document fails to clearly and accurately disclose said information, the failure shall be prima facie evidence of the violation of this Article. Every person engaged in transporting such beverages over the public highways of this State shall keep accurate records of the character and volume of such shipments and the character and number of packages or containers, and shall keep records open at all times for inspection by the State Board of Alcoholic Control and State A.B.C. officers. Such person

shall make report of all shipments of such beverages into, out of, or between points in this State at such times and in such detail and form as may be required by the State Board of Alcoholic Control.

The provisions of this section as to transportation of malt-beverages and wine (fortified and unfortified) by motor vehicles over the public highways of this State shall in like manner apply to the owner or operator of any boat using the waters of the State for such transportation, and all of the provisions of this section with respect to permits for such transportation and reports to the State Board of Alcoholic Control by the operators of motor vehicles on public highways shall in like manner apply to the owner or operator of any boat using the waters of this State.

(1975, c. 411, s. 7.)

Editor's Note. — The 1975 amendment substituted "wine (fortified and unfortified)" for "unfortified wine" throughout subsection (a).

As subsections (b) and (c) were not changed by the amendment, they are not set out.

§ 18A-42. Salesman's permit. — (a) Every salesman for a wholesale distributor of malt beverages or wine (fortified or unfortified) shall apply to the Board for a wholesale salesman's permit to sell such beverages. This shall be deemed to include salesmen stationed at the wholesaler's warehouse as well as route salesmen who sell and deliver malt beverages or wine (fortified or unfortified) to retailers. All persons entering such employment after May 1, 1951, shall apply to the Board in like manner for a salesman's permit. A salesman's permit shall continue until voluntarily surrendered to the Board, or until suspended or revoked by the Board, or until the salesman ceases to be employed by the employer for whom he was working when he obtained his most recent permit.

(b) Such salesman shall be 21 years of age. No salesman's permit shall be issued to any person who has been convicted within two years preceding the filing of his application of violating the State or federal liquor laws, or who has been convicted of, or entered a plea of guilty or nolo contendere to, a felony or of any crime involving moral turpitude within the past three years and without restoration of his citizenship by the court. No salesman's permit shall be issued to any person whose permit or license issued to him pursuant to the laws of this State or any other state to sell intoxicating liquors of any kind has been revoked during the three years next preceding the date of application for a permit.

(1975, c. 330, s. 2; c. 411, s. 8.)

Editor's Note. — The first 1975 amendment deleted "and shall renew the permit by May 1 of each succeeding year thereafter" following "such beverages" at the end of the first sentence, and added the last sentence, of subsection (a). The amendment directed that the new sentence be added "at the end of that section," but it appears that the intention of the act was to add it at the end of subsection (a).

The second 1975 amendment deleted "and a citizen of the United States" at the end of the first sentence of subsection (b).

As the rest of the section was not changed by the amendments, only subsections (a) and (b) are set out.

§ 18A-44.1. Location of hearing. — The hearing held by a hearing officer shall be held in the following localities: Ahoskie, Asheville, Charlotte, Elizabeth City, Fayetteville, Franklin, Goldsboro, Greensboro, Greenville, Hickory, Jacksonville, Kinston, New Bern, Raleigh, Statesville, Wilmington and Winston-Salem. Such hearing shall be held no more than 100 miles, as can reasonably be determined by the A.B.C. Board, from the county seat of the county in which any person whose property or rights are the subject matter of the hearing maintains his residence. In any case, the person whose property or rights are the subject of the hearing and the State Board may agree that the hearing is to be held in some other location. The location of hearings held under the authority of Chapter 18A shall be governed by this section, notwithstanding the provisions of the Administrative Procedure Act as contained in Chapter 150A. (1975, c. 825, s. 1.)

Editor's Note. — Session Laws 1975, c. 825, s. 2, makes the act effective July 1, 1975.

ARTICLE 6.

Miscellaneous Provisions.

§ 18A-55. Books, records, reports.

Stated in Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630 (1975).

Chapter 19A.**Protection of Animals.****Article 1.****Civil Remedy for Protection of Animals.**

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19A-1. Definitions.

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19A-3. Preliminary injunction or restraining order.

19A-4. Permanent injunction.

19A-5 to 19A-9. [Reserved.]

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19A-11. Inapplicable to bona fide zoos, etc.

19A-12. Possession of black bear on July 1, 1975; surrender of bear; modification of facilities; forfeiture.

19A-13. Violation of Article.

19A-14. Enforcement of Article.

Article 2.**Protection of Black Bears.**

19A-10. Unlawful to buy, sell or enclose (except as provided) black bear.

ARTICLE 1.*Civil Remedy for Protection of Animals.*

§ 19A-1. **Definitions.** — For the purposes of this Chapter [Article] the following definition of terms shall be applicable:

- (1) The terms “animals” and “dumb animals” shall be held to include every useful living creature.
- (2) The term “cruelty” shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted; but such term shall not be construed to prohibit lawful taking or attempting to take game animals or birds as allowed by law, provided further that such term shall not include activities sponsored by agencies or institutions conducting biomedical research or training or for sport as provided by the laws of North Carolina.
- (3) The term “person” as used herein shall be held to include any persons, firm or corporation, including any nonprofit corporation, such as a society for the prevention of cruelty to animals. (1969, c. 831.)

Editor's Note. — Pursuant to Session Laws 1975, c. 56, effective July 1, 1975, the former provisions of Chapter 19A have been designated

Article 1 of that Chapter. The definitions in the above section are applicable only to Article 1.

§ 19A-2. **Purpose.** — It shall be the purpose of this Chapter [Article] to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall be held to include any “person” as hereinbefore defined even though such person does not have a possessory or ownership right in an animal; a real party in interest as defendant shall include any person who owns or has possession of an animal. (1969, c. 831.)

§ 19A-3. Preliminary injunction or restraining order. — Upon the filing of a verified complaint in superior court in the county in which cruelty to an animal has allegedly occurred, and upon petition for a preliminary injunction or temporary restraining order, the resident judge or any judge holding a regular or special session of court may in the court's discretion issue such preliminary injunction or temporary restraining order, the duration of which shall be 20 days. Such injunction or restraining order may in the discretion of the court issue without prior notice to any person named as a defendant in the verified complaint if service of process cannot be obtained, and such injunction may issue immediately and as soon as practicable be served upon every person named as a defendant. Every such preliminary injunction or restraining order, if the petition or complaint so requests, may in the discretion of the court give plaintiff the right to temporarily correct the condition giving rise to the cruel treatment of an animal; and if it shall appear upon the face of the complaint or verified petition that the condition giving rise to the cruel treatment of an animal requires that plaintiff take custody of an animal, then it shall be proper for the court in its discretion in the order to allow plaintiff to take possession of the animal. (1969, c. 831; 1971, c. 528, s. 10.)

§ 19A-4. Permanent injunction. — On the date specified in a preliminary injunction or temporary restraining order, which date shall not be later than 20 days from the issuance thereof, a resident superior court judge or a superior court judge holding a regular or special session of superior court in the county in which the action is brought shall determine the merits of the action by trial without jury, and upon hearing such evidence as may be presented, shall enter orders as he deems appropriate, including the issuance of a permanent injunction or final determination of the custody of the animal where appropriate. (1969, c. 831; 1971, c. 528, s. 10.)

§§ 19A-5 to 19A-9: Reserved for future codification purposes.

ARTICLE 2.

Protection of Black Bears.

§ 19A-10. Unlawful to buy, sell or enclose (except as provided) black bear. — Except as otherwise provided in applicable statutes, it shall be unlawful for any person to buy or sell black bears or for any person, firm or corporation to possess or keep any black bear (*Ursus americanus*) in any enclosure, pen, cage, or other place or means of captivity except as hereinafter provided. (1975, c. 56, s. 1.)

Editor's Note. — Session Laws 1975, c. 56, s. 7, provides that the act shall become effective July 1, 1975.

§ 19A-11. Inapplicable to bona fide zoos, etc. — The provisions of this Article shall not apply to bona fide zoos which are operated by federal, State, or local governmental agencies, or to educational institutions in which black bears are kept or exhibited as part of a bona fide course of training or research in the natural sciences, or to black bears held without caging under conditions simulating a natural habitat, the development of which is in accord with plans and specifications developed by the holder and approved by the Wildlife Resources Commission. (1975, c. 56, s. 2.)

§ 19A-12. Possession of black bear on July 1, 1975; surrender of bear; modification of facilities; forfeiture. — Any person, firm or corporation in possession of a black bear on July 1, 1975, under an existing permit issued by the Wildlife Resources Commission, where the conditions under which such black bear is held are in violation of this Article, may immediately surrender such black bear and such permit to the Wildlife Resources Commission which shall compensate such person, firm or corporation in the amount actually paid for such bear not to exceed the sum of one hundred dollars (\$100.00) for any one bear. In lieu of surrendering such black bear and such permit, any such person, firm or corporation may give immediately written notice to the Wildlife Resources Commission that plans and specifications for facilities to hold such bear without caging under conditions simulating a natural habitat will be submitted to the Commission for approval within 30 days thereafter. In the event such plans and specifications are not submitted within the time thus limited, or they are disapproved by the Commission, or the facilities are not completed in accordance therewith within 60 days after approval by the Commission, continued possession of a black bear by such person, firm or corporation after any of such events shall constitute a violation of the provisions of this Article, and any such black bear shall be forfeited to the Wildlife Resources Commission without compensation. (1975, c. 56, s. 3.)

§ 19A-13. Violation of Article. — Violation of the provisions of this Article shall constitute a misdemeanor punishable by a fine of not less than five hundred dollars (\$500.00) or by imprisonment for not less than 90 days. (1975, c. 56, s. 4.)

§ 19A-14. Enforcement of Article. — Law-enforcement officers of the Wildlife Resources Commission and all other peace officers are authorized and empowered to enforce the provisions of this Article. (1975, c. 56, s. 5.)

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20-316.1. Notification of Division of renewal or reinstatement of policy.

20-317. Insurance required by any other law; certain operators not affected.

Article 13A.**Certification of Automobile Insurance Coverage by Insurance Companies.**

Sec.

20-319.1. Company to forward certification within seven days after receipt of request.

Article 14.**Driver Training School Licensing Law.**

Sec.

20-328. Administration of Article.

ARTICLE 1.*Division of Motor Vehicles.*

§ 20-1. Division of Motor Vehicles of the Department of Transportation; powers and duties. — The Department of Motor Vehicles is hereby redesignated the Division of Motor Vehicles of the Department of Transportation. The Division of Motor Vehicles shall have the same powers and duties as were held by the Department of Motor Vehicles except as otherwise provided in this Article. All powers, duties and functions relating to the collection of motor fuel taxes and the collection of the gasoline and oil inspection taxes shall continue to be vested in and exercised by the Secretary of Revenue, and wherever it is now provided by law that reports shall be filed with the Secretary of Revenue, or Department of Revenue, as a basis for collecting the motor fuel or gasoline and oil inspection taxes, or enforcing any of the laws regarding the motor fuel or gasoline and oil inspection taxes, such reports shall continue to be made to the Department of Revenue and the Commissioner of Motor Vehicles shall make available to the Secretary of Revenue all information from files of the Division of Motor Vehicles which the Secretary of Revenue may request to enable him to better enforce the law with respect to the collection of such taxes. Nothing in this Article shall deprive the Utilities Commission of any of the duties or powers now vested in it with regard to the regulation of motor vehicle carriers.

Articles 2 and 3 of Chapter 150A shall not apply to the Board of Transportation, the Division of Highways, and Division of Motor Vehicles. (1941, c. 36, s. 1; 1949, c. 1167; 1973, c. 476, s. 193; 1975, c. 716, s. 5; c. 863.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, rewrote this section so as to change the former Department of Motor Vehicles to the Division of Motor Vehicles of the Department of Transportation.

The second 1975 amendment added the second paragraph.

For acts relating to parking meters, etc. —

Session Laws 1947, c. 735, cited in this note in the Replacement Volume, was repealed by Session Laws 1975, c. 239, s. 4.

§ 20-2. Commissioner of Motor Vehicles. — The Division of Motor Vehicles shall be administered by the Commissioner of Motor Vehicles, who shall be appointed by and serve at the pleasure of the Secretary of the Department of Transportation. The Commissioner shall be paid an annual salary to be fixed by the Governor, with the approval of the Advisory Budget Commission and allowed his traveling expenses as allowed by law.

In any action proceeding, or matter of any kind, to which the Commissioner of Motor Vehicles is a party or in which he may have an interest, all pleadings, legal notices, proof of claim, warrants for collection, certificates of tax liability, executions, and other legal documents, may be signed and verified on behalf of the Commissioner of Motor Vehicles by the Assistant Commissioner of Motor Vehicles or by any director or assistant director of any section of the Division of Motor Vehicles or by any other agent or employee of the Division so authorized by the Commissioner of Motor Vehicles. (1941, c. 36, s. 2; 1945, c. 527; 1955, c. 472; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote the first sentence of the first paragraph so as to provide for the appointment of the Commissioner by the Secretary of the Department of Transportation rather than by the Governor, substituted "and allowed his traveling expenses as allowed by law" for "payable in monthly installments, and shall likewise be allowed his traveling expenses

when away from Raleigh on official business" at the end of the second sentence of the first paragraph and, in the second paragraph, inserted "of Motor Vehicles" following "Commissioner" in two places and substituted "section of the Division" for "Division of the Department of Motor Vehicles" and "employee of the Division" for "employee of the Department" near the end of the paragraph.

§ 20-3. Organization of Division. — The Commissioner, subject to the approval of the Secretary of the Department of Transportation, shall organize and administer the Division in such manner as he may deem necessary to conduct the work of the Division. (1941, c. 36, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, rewrote this section.

§ 20-3.1. Purchase of additional airplanes. — The Division of Motor Vehicles shall not purchase additional airplanes without the express authorization of the General Assembly. (1963, c. 911, s. 1½; 1971, c. 198; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-4. Clarification of conflicts as to transfer of functions. — In the event that there shall arise any conflict as to the transfer of any functions from the Department of Revenue to the Division of Motor Vehicles, the Governor of the State is hereby authorized to issue an executive order clarifying and making certain the issue thus arising. (1941, c. 36, s. 5; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-4.01. Definitions. — Unless the context otherwise requires, the following words and phrases, for the purpose of this Chapter, shall have the following meanings:

- (3) **Chauffeur.** — Every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives any motor vehicle when in use for the transportation of persons or property for compensation and the driver, other than the owner of a private hauler, of any property-hauling vehicle or combination of vehicles licensed for more than 30,000 pounds gross weight and the driver of any passenger-carrying vehicle of over nine-passenger capacity except the driver of a church bus, farm bus, school bus, or an activity bus for a nonprofit organization when such bus is being operated for a nonprofit purpose, who holds a valid operator's license. Those under 20 years of age must be certified and licensed to operate a North Carolina school bus.
- (6) **Division.** — The Division of Motor Vehicles acting directly or through its duly authorized officers and agents.

- (20) **Manufacturer's Certificate.** — A certification on a form approved by the Division, signed by the manufacturer, indicating the name of the person or dealer to whom the therein-described vehicle is transferred, the date of transfer and that such vehicle is the first transfer of such vehicle in ordinary trade and commerce. The description of the vehicle shall include the make, model, year, type of body, identification number or numbers, and such other information as the Division may require.
- (23) **Motor Vehicle.** — Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include bicycles with helper motors rated less than one brake horsepower which produce only ordinary pedaling speeds up to a maximum of 20 miles per hour.
- (27) **Passenger Vehicles.** —
- a. **Excursion passenger vehicles.** — Vehicles transporting persons on sight-seeing or travel tours.
 - b. **For-hire passenger vehicles.** — Vehicles transporting persons for compensation. This classification shall not include vehicles of nine-passenger capacity or less operated as ambulances or operated by the owner where the cost of operation is shared by the passengers; vehicles transporting students for the public school system under contract with the State Board of Education; or vehicles leased to the United States of America or any of its agencies on a nonprofit basis.
 - c. **Common carriers of passengers.** — Vehicles operated under a franchise certificate issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons or property for compensation.
 - d. **Motorcycles.** — Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and bicycles with helper motors rated less than one brake horsepower which produce only ordinary pedaling speeds up to a maximum of 20 miles per hour.
 - e. **U-drive-it passenger vehicles.** — Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.
 - f. **Ambulances.** — Vehicles equipped for transporting wounded, injured, or sick persons.
 - g. **Private passenger vehicles.** — All other passenger vehicles not included in the above definitions.
- (44) **Special Mobile Equipment.** — Every truck, truck-tractor, industrial truck, trailer, or semitrailer on which have been permanently attached cranes, mills, well-boring apparatus, ditch-digging apparatus, air compressors, electric welders, or any similar type apparatus or which have been converted into living or office quarters, or other self-propelled vehicles which were originally constructed in a similar manner which are operated on the highway only for the purpose of getting to and from a nonhighway job and not for the transportation of persons or property or for hire. This shall also include trucks on which special equipment has been mounted and used by American

Legion or Shrine Temples for parade purposes, trucks or vehicles privately owned on which fire-fighting equipment has been mounted and which are used only for fire-fighting purposes, and vehicles on which are permanently mounted feed mixers; grinders, and mills although there is also transported on the vehicle molasses or other similar type feed additives for use in connection with the feed-mixing, grinding, or milling process.

(1975, cc. 94, 208; c. 716, s. 5; c. 743; c. 859, s. 1.)

Editor's Note. — The first 1975 amendment, in subdivision (27), deleted “and” preceding “three-wheeled vehicles” in paragraph d and added at the end of paragraph d the language beginning “and bicycles with helper motors.”

The second 1975 amendment substituted “30,000” for “26,000” near the middle of the first sentence of subdivision (3).

The third 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subdivisions (6) and (20).

The fourth 1975 amendment, effective July 1, 1975, inserted “industrial truck” near the beginning of the first section in subdivision (44).

The fifth 1975 amendment added the second sentence in subdivision (23).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (3), (6), (20), (23), (27) and (44) are set out.

ARTICLE 1A.

Reciprocity Agreements as to Registration and Licensing.

§ 20-4.2. **Definitions.** — As used in this Article:

- (3) “Division” means the Division of Motor Vehicles of North Carolina.
- (5) “Properly registered,” as applied to place of registration, means:
 - a. The jurisdiction where the person registering the vehicle has his legal residence, or
 - b. In the case of a commercial vehicle, including a leased vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from such place of business, and, the vehicle has been assigned to such place of business, or
 - c. In the case of a commercial vehicle, including leased vehicles, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.
 - d. In case of doubt or dispute as to the proper place of registration of a vehicle, the Division shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected. (1961, c. 642, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subdivision (3) and in paragraph d of subdivision (5).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (3) and (5) are set out.

§ 20-4.4. Authority for reciprocity agreements; provisions; reciprocity standards.

(b) When the Commissioner enters into a reciprocal registration agreement or arrangement with another jurisdiction which has a motor vehicle tax, license or fee which is not subject to waiver by a reciprocity agreement, the Commissioner is empowered and authorized to provide as a condition of the agreement or arrangement that owners of vehicles licensed in such other jurisdiction shall pay some equalizing tax or fee to the Division. The failure of any owner or operator of a vehicle to pay the taxes or fees provided in the agreement or arrangement shall prohibit them from receiving any benefits therefrom and they shall be required to register their vehicles and pay taxes as if there was no agreement or arrangement. (1961, c. 642, s. 1; 1971, c. 588; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" at the end of the first sentence of subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

§ 20-4.9. Suspension of reciprocity benefits. — Agreements, arrangements or declarations made under the authority of this Article may include provisions authorizing the Division to suspend or cancel the exemptions, benefits or privileges granted thereunder to a vehicle which is in violation of any of the conditions or terms of such agreements, arrangements or declarations or is in violation of the laws of this State relating to motor vehicles or rules and regulations lawfully promulgated thereunder. (1961, c. 642, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

ARTICLE 1B.

Reciprocal Provisions as to Arrest of Nonresidents.

§ 20-4.19. Issuance of citation to nonresident; officer to report noncompliance.

(c) Upon the failure of the nonresident to comply with the citation, the law-enforcement officer shall obtain a warrant for his arrest and shall report the noncompliance to the Division. The report of noncompliance shall clearly identify the nonresident; describe the violation, specifying the section of the statute, code, or ordinance violated; indicate the location and date of offense; identify the vehicle involved; bear the signature of the law-enforcement officer; and contain a copy of the personal recognizance signed by the nonresident. (1973, c. 736; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" at the end of the first sentence of subsection (c).

As subsections (a) and (b) were not changed by the amendment, they are not set out.

§ 20-4.20. Division to transmit report to reciprocating state; suspension of license for noncompliance with citation issued by reciprocating state. — (a) Upon receipt of a report of noncompliance, the Division shall transmit a certified copy of such report to the official in charge of the issuance of licenses in the reciprocating state in which the nonresident resides or by which he is licensed. (1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (a). As the rest of the section was not changed by the amendment, only subsection (a) is set out.

ARTICLE 2.

Uniform Driver's License Act.

§ 20-7. Operators' and chauffeurs' licenses; expiration; examinations; fees. — (a) Except as otherwise provided in G.S. 20-8, no person shall act as or operate a motor vehicle over any highway in this State as a chauffeur unless such person has first been licensed as a chauffeur by the Division under the provisions of this Article. Except as otherwise provided in G.S. 20-8, no person shall operate a motor vehicle over any highway in this State unless such person has first been licensed as an operator or a chauffeur by the Division under the provisions of this Article. Any person who takes up residence in this State on a permanent basis shall be exempt from the provisions of this subsection for a period of 30 days from the date that residence is established, provided he is properly licensed in the jurisdiction of which he is a former resident.

(b) Every application for an operator's or chauffeur's license shall be made upon the approved form furnished by the Division.

(c) No person shall hereafter be issued an operator's license until it is determined that such person is physically and mentally capable of safely operating motor vehicles over the highways of the State. In determining whether or not a person is physically and mentally capable of safely operating motor vehicles over the highways of the State, the Division shall require such person to demonstrate his capability by passing an examination, which may include road tests, oral and in the case of literate applicants written tests, and tests of vision, as the Division may require. Provided, however, that persons 60 years of age and over, when being examined as herein provided, shall not be required to parallel park a motor vehicle as part of any such examination.

(d) The Division shall cause each person who has heretofore been issued an operator's license to be examined or reexamined, as the case may be, to determine whether or not such person is physically and mentally capable of safely operating motor vehicles over the highways of the State. Those persons found, as a result of such examination or reexamination, to be capable of safely operating motor vehicles over the highways of the State shall be reissued operators' licenses; and those persons found to be incapable of safely operating motor vehicles over the highways of the State shall not be reissued operators' licenses. The examination required by this subsection may include such road tests, oral and in the case of literate applicants written tests, and tests of vision, as the Division may require. The Division may once reissue operators' licenses without examination to licensed operators who have passed an operator's examination given by the Division subsequent to July 1, 1945, and prior to July 1, 1947. Provided, however, that persons 60 years of age and over, when being examined as herein provided, shall not be required to parallel park a motor vehicle as part of any such examination.

(e) The Division is hereby authorized to grant unlimited licenses or licenses containing such limitations as it may deem advisable. Such limitation or limitations shall be noted on the face of the license, and it shall be unlawful for

the holder of a license so limited to operate a motor vehicle without complying with the limitations, and the operation of a motor vehicle without complying with the limitations by a person holding a license with such limitations shall be the equivalent of operating a motor vehicle without a chauffeur's or operator's license. If any applicant shall suffer from any physical defect or disease which affects his or her operation of a motor vehicle, the Division may require to be filed with it a certificate of such applicant's condition signed by some medical authority of the applicant's community designated by the Division. This certificate shall in all cases be treated as confidential. Nothing in this subsection shall be construed to prevent the Division from refusing to issue a license, either limited or unlimited, to any person deemed to be incapable of operating a motor vehicle with safety to himself and to the public: Provided, that nothing herein shall prohibit deaf persons from operating motor vehicles who in every other way meet the requirements of this section.

(f) The operators' licenses issued under this section shall automatically expire on the birthday of the licensee in the fourth year following the year of issuance; and no new license shall be issued to any operator after the expiration of his license until such operator has again passed the examination specified in this section. Any operator may at any time within 60 days prior to the expiration of his license apply for a new license and if the applicant meets the requirements of this Article, the Division shall issue a new license to him. A new license issued within 60 days prior to the expiration of an applicant's old license or within 12 months thereafter shall automatically expire four years from the date of the expiration of the applicant's old license.

Any person serving in the armed forces of the United States on active duty and holding a valid operator's license properly issued under this section and stationed outside the State of North Carolina may renew his license by making application to the Division by mail. Any other person, except a nonresident as defined in this Article, who holds a valid operator's license issued under this section and who is temporarily residing outside North Carolina, may also renew by making application to the Division by mail. For purposes of this section "temporarily" shall mean not less than 30 days continuous absence from North Carolina. In either case, the Division may waive the examination and color photograph ordinarily required for the renewal of an operator's license, and may impose in lieu thereof such conditions as it may deem appropriate to each particular application; provided that such license shall expire 30 days after licensee returns to North Carolina, and such license shall be designated as temporary.

Provided further, that no person who applies for the renewal of his operator's license shall be required to take a written examination or road test as a part of any such examination unless such person has been convicted of a traffic violation or had prayer for judgment continued with respect to any traffic violation within a four-year period immediately preceding the date of such person's renewal application or unless such person suffers from a mental or physical condition which impairs his ability to operate a motor vehicle.

(g) Every chauffeur's license issued under this section shall automatically expire on the birthday of the licensee in the second year following the year of issuance and chauffeurs shall renew their licenses every two years after an examination which may include road tests, oral and, in the case of literate applicants, written tests, and tests of vision as the Division may require: Provided, that the Commissioner may, in proper cases, waive the examination required by this subsection: Provided, further, that no chauffeur's license issued hereunder shall expire in less than six months from the date of issuance.

Provided further, that no person who applies for the renewal of his chauffeur's license shall be required to take a written examination or road test as a part of any such examination unless such person has been convicted of a

traffic violation or had prayer for judgment continued with respect to any traffic violation within a four-year period immediately preceding the date of such person's renewal application or unless such person suffers from a mental or physical condition which impairs his ability to operate a motor vehicle.

(h) Upon receipt of information that the physical or mental condition of any person has changed since his or her examination for an operator's or chauffeur's license and before a new examination is required by this section, the Division may, after 10 days' written notice, require such person to take another examination to determine his or her capability to operate safely motor vehicles over the highways of the State. If such person is found to be capable of safely operating vehicles over the highways of the State, license shall be reissued to him or her and no fee shall be collected by the Division for such examination and reissuance of license. If such person is found to be incapable of safely operating vehicles over the highways of the State, no license shall be issued or reissued to him or her unless such person shall subsequently pass an examination given by the Division.

(i) The fee for issuance or reissuance of an operator's license shall be four dollars (\$4.00) and the fee for issuance or reissuance of a chauffeur's license shall be five dollars (\$5.00).

(il) Any person whose operator's or chauffeur's license or other privilege to operate a motor vehicle in this State has been suspended, canceled or revoked pursuant to the provisions of this Chapter shall pay a restoration fee of fifteen dollars (\$15.00) to the Division prior to the issuance to such person of a new operator's or chauffeur's license or the restoration of such operator's or chauffeur's license or privilege; such restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law.

(j) The fees collected under this section and G.S. 20-14 shall be placed in a special fund to be designated the "Operators' and Chauffeurs' License Fund" and shall be used under the direction and supervision of the Secretary of Administration for the administration of this section.

(l) Any person who except for lack of instruction in operating a motor vehicle would be qualified to obtain an operator's license under this Article may apply for a temporary learner's permit, and the Division shall issue such permit, entitling the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways for a period of 18 months. The fee for issuance of a temporary learner's permit shall be two dollars (\$2.00). Any such learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. Such person must, while operating a motor vehicle over the highways, be accompanied by a licensed operator or chauffeur who is actually occupying a seat beside the driver.

The fee for the issuance of a renewal or a second temporary learner's permit shall be three dollars and twenty-five cents (\$3.25).

(l-1) The Division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to an applicant who is enrolled in a driver training program as provided for in G.S. 20-88.1 even though the applicant has not yet reached the legal age to be eligible for an operator's license. Such instruction permit shall entitle the permittee when he has such permit in his immediate possession to operate a motor vehicle subject to the restrictions imposed by the Division. The restrictions which the Division may impose on such permits include but are not limited to restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee.

(m) The Division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to an applicant who is enrolled in a driver-training program approved by the State Superintendent of Public Instruction even though the applicant has not yet

reached the legal age to be eligible for an operator's license. Such instruction permit shall entitle the permittee when he has such permit in his immediate possession to operate a motor vehicle subject to the restrictions imposed by the Division. The restrictions which the Division may impose on such permits include but are not limited to restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee.

(n) Every operator's or chauffeur's license issued by the Division shall bear thereon the distinguishing number assigned to the licensee and color photograph of the licensee of a size approved by the Commissioner and shall contain the name, age, residence address and a brief description of the licensee, who, for the purpose of identification and as a condition precedent to the validity of the license, immediately upon receipt thereof, shall endorse his or her regular signature in ink upon the same in the space provided for that purpose unless a facsimile of his or her signature appears thereon; provided the requirement that a color photograph of the licensee appear on the license may be waived by the Commissioner upon satisfactory proof that the taking of such photograph violates the religious convictions of the licensee. Such license shall be carried by the licensee at all times while engaged in the operation of a motor vehicle. However, no person charged with failing to so carry such license shall be convicted, if he produces in court an operator's or chauffeur's license theretofore issued to him and valid at the time of his arrest.

(1975, c. 162, s. 1; c. 295; c. 296, ss. 1, 2; c. 684; c. 716, s. 5; c. 841; c. 879, s. 46.)

Editor's Note. —

The first 1975 amendment, effective May 1, 1975, and which expires June 1, 1977, added the second paragraph of subsection (g).

The second 1975 amendment, effective July 1, 1975, increased the restoration fee in subsection (i) from \$10.00 to \$15.00.

The third 1975 amendment, effective July 1, 1975, substituted "18 months" for "six months" at the end of the first and present third sentences of subsection (l), inserted the present second sentence of subsection (l), and substituted "second learner's" for "new" and inserted "may be" in the present third sentence of subsection (l). The amendment also added the second paragraphs of subsections (l) and (m).

The fourth 1975 amendment, effective July 1, 1975, increased the operator's and chauffeur's license fees in subsection (i) from \$3.25 to \$4.00 and from \$4.75 to \$5.00 respectively.

The fifth 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

The sixth 1975 amendment deleted in subsection (m) the second paragraph, which had been added by the third 1975 amendment and which read: "The fee for the issuance of a restricted instruction permit shall be two dollars (\$2.00)."

The seventh 1975 amendment, effective July 1, 1975, substituted "Secretary of Administration" for "Assistant Director of the Budget" in subsection (j).

Session Laws 1975, c. 162, s. 2, provides: "The Department of Motor Vehicles shall monitor the occurrence of traffic violations within the State and submit yearly reports to the General Assembly. The effect of this act on the violation statistics of North Carolina drivers as of January 1, 1976, and each year thereafter shall be included in the yearly report to allow the objective evaluation of this act and its effect on North Carolina drivers."

Only the subsections changed by the amendments are set out.

§ 20-7.1. Notification of change of address. — Whenever the holder of a license issued under the provisions of G.S. 20-7 changes his or her address as shown on such license, he or she shall notify the Division of Motor Vehicles of such change within 60 days after such address has been changed. (1975, c. 223, s. 1.)

Editor's Note. — Session Laws 1975, c. 223, s. 2, makes the act effective July 1, 1975.

§ 20-8. Persons exempt from license. — The following are exempt from license hereunder:

- (7) Any person who is at least 16 years of age and while operating a bicycle with a helper motor rated less than one brake horsepower which produces only ordinary pedaling speeds up to a maximum of 20 miles per hour. (1935, c. 52, s. 3; 1963, c. 1175; 1973, c. 1017; 1975, c. 859, s. 2.)

Editor's Note. —

The 1975 amendment added subdivision (7).
As the rest of the section was not changed by

the amendment, only the introductory language
and subdivision (7) are set out.

§ 20-9. What persons shall not be licensed. — (a) An operator's license shall not be issued to any person under the age of 16 years, and no chauffeur's license shall be issued to any person under the age of 18 years.

(b) The Division shall not issue an operator's or chauffeur's license to any person whose license, either as operator or chauffeur, has been suspended or revoked during the period for which the license was suspended or revoked.

(c) The Division shall not issue an operator's or chauffeur's license to any person who is an habitual drunkard or is an habitual user of narcotic drugs or barbiturates, whether or not such use be in accordance with the prescription of a physician.

(d) No operator's or chauffeur's license shall be issued to any applicant who has been previously adjudged insane or an idiot, imbecile, or feeble-minded, and who has not at the time of such application been restored to competency by judicial decree or released from a hospital for the insane or feeble-minded upon a certificate of the superintendent that such person is competent, nor then unless the Division is satisfied that such person is competent to operate a motor vehicle with safety to persons and property.

(e) The Division shall not issue an operator's or chauffeur's license to any person when in the opinion of the Division such person is afflicted with or suffering from such physical or mental disability or disease as will serve to prevent such person from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways, nor shall a license be issued to any person who is unable to understand highway warnings or direction signs.

(f) The Division shall not issue an operator's or chauffeur's license to any person whose license or driving privilege is in a state of suspension or revocation in any jurisdiction, if the acts or things upon which the suspension or revocation in such other jurisdiction was based would constitute lawful grounds for suspension or revocation in this State had those acts or things been done or committed in this State.

(g) The Division may issue an operator's or chauffeur's license to any applicant covered by subsection (e) of this section under the following conditions:

- (1) The Division may issue a license to any person who is afflicted with or suffering from physical or mental disability set out in subsection (e) of this section who is otherwise qualified to obtain a license, provided such person submits to the Division a certificate in the form prescribed in subdivision (2). Unless sooner revoked, suspended or cancelled, such license continues in force as long as the licensee presents to the Division one year from the date of issuance of such license and at yearly intervals thereafter a certificate in the form prescribed in subdivision (2), provided the Commissioner may require the submission of such certificate at six months intervals where in his opinion public safety

demands. In no event shall a license issued pursuant to this section be valid beyond the birthday of the licensee in the fourth year following the year of issuance, at which time the license is subject to renewal.

- (2) The Division shall not issue a license pursuant to this section unless the applicant has submitted to a physical examination by a physician or surgeon duly licensed to practice medicine in this State and unless such examining physician or surgeon has completed and signed the certificate required by subdivision (1). Such certificate shall be devised by the Commissioner with the advice of qualified experts in the field of diagnosing and treating physical and mental disorders as he may select to assist him and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not it would be a hazard to public safety to permit the applicant to operate a motor vehicle, including, if such is the fact, the examining physician's statement that the applicant is under medication and treatment and that such person's physical or mental disability is controlled. The certificate shall contain a waiver of privilege and the recommendation of the examining physician to the Commissioner as to whether a license should be issued to the applicant.
- (3) The Commissioner is not bound by the recommendation of the examining physician but shall give fair consideration to such recommendation in exercising his discretion in acting upon the application, the criterion being whether or not, upon all the evidence, it appears that it is safe to permit the applicant to operate a motor vehicle. The burden of proof of such fact is upon the applicant. In deciding whether to issue or deny a license, the Commissioner may be guided by opinion of experts in the field of diagnosing and treating the specific physical or mental disorder suffered by an applicant and such experts may be compensated for their services on an equitable basis. The Commissioner may also take into consideration any other factors which bear on the issue of public safety.
- (4) Whenever a license is denied by the Commissioner, such denial may be reviewed by a reviewing board upon written request of the applicant filed with the Division within 10 days after receipt of such denial. The reviewing board shall consist of the Commissioner or his authorized representative and four persons designated by the chairman of the Commission for Health Services. The persons designated by the chairman of the Commission for Health Services shall be either members of the Commission for Health Services or physicians duly licensed to practice medicine in this State. The members so designated by the chairman of the Commission for Health Services shall receive the same per diem and expenses as provided by law for members of the Commission for Health Services, which per diem and expenses shall be charged to the same appropriation as per diems and expenses for members of the Commission for Health Services. The Commissioner or his authorized representative, plus any two of the members designated by the chairman of the Commission for Health Services, constitute a quorum. The procedure for hearings authorized by this section shall be as follows:
 - a. Applicants shall be afforded an opportunity for hearing, after reasonable notice of not less than 10 days, before the review board established by subdivision (4). The notice shall be in writing and shall be delivered to the applicant in person or sent by certified mail, with return receipt requested. The notice shall state the time, place, and subject of the hearing.
 - b. The review board may compel the attendance of witnesses and the production of such books, records and papers as it desires at a

hearing authorized by the section. Upon request of an applicant, a subpoena to compel the attendance of any witness or a subpoena duces tecum to compel the production of any books, records, or papers shall be issued by the board. Subpoenas shall be directed to the sheriff of the county where the witness resides or is found and shall be served and returned in the same manner as a subpoena in a criminal case. Fees of the sheriff and witnesses shall be the same as that allowed in the district court in cases before that court and shall be paid in the same manner as other expenses of the Division of Motor Vehicles are paid. In any case of disobedience or neglect of any subpoena served on any person, or the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, the district court or superior court where such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board, shall compel obedience or punish as for contempt.

- c. A hearing may be continued upon motion of the applicant for good cause shown with approval of the board or upon order of the board.
- d. The board shall pass upon the admissibility of evidence at a hearing but the applicant affected may at the time object to the board's ruling, and, if evidence offered by an applicant is rejected the party may proffer the evidence, and such proffer shall be made a part of the record. The board shall not be bound by common law or statutory rules of evidence which prevail in courts of law or equity and may admit and give probative value to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They may exclude incompetent, immaterial, irrelevant and unduly repetitious evidence. Uncontested facts may be stipulated by agreement between an applicant and the board and evidence relating thereto may be excluded. All evidence, including records and documents in the possession of the Division of Motor Vehicles or the board, of which the board desires to avail itself shall be made a part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The board shall prepare an official record, which shall include testimony and exhibits. A record of the testimony and other evidence submitted shall be taken, but it shall not be necessary to transcribe shorthand notes or electronic recordings unless requested for purposes of court review.
- e. Every decision and order adverse to an applicant shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the board's conclusions on each contested issue of fact. Counsel for applicant, or applicant, if he has no counsel, shall be notified of the board's decision in person or by registered mail with return receipt requested. A copy of the board's decision with accompanying findings and conclusions shall be delivered or mailed upon request to applicant's attorney of record or to applicant, if he has no attorney.
- f. Actions of the reviewing board are subject to judicial review as provided under Chapter 150[A] of the General Statutes.
- g. An applicant or licensee who has been denied a license pursuant to a hearing before the board may not file a new application until the expiration of two years after the date of such denial by the board.

- h. All records and evidence collected and compiled by the Division and the reviewing board shall not be considered public records within the meaning of Chapter [section] 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. All information furnished by or on behalf of an applicant under this section shall be without prejudice and shall be for the use of the Division, the reviewing board or the court in administering this section and shall not be used in any manner as evidence, or for any other purposes in any trial, civil or criminal.

(h) The Division shall not issue an operator's or chauffeur's license to an applicant who is the holder of any license to drive issued by another state, district or territory of the United States and currently in force, unless the applicant surrenders such license or licenses; provided, this section shall not apply to nonresident military personnel or members of their household. (1935, c. 52, s. 4; 1951, c. 542, s. 3; 1953, c. 773; 1955, c. 1187, s. 7; 1967, cc. 961, 966; 1971, c. 152; c. 528, s. 11; 1973, cc. 135, 441; c. 476, s. 128; c. 1331, s. 3; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

Constitutionality. — Paragraph (g)(4)g of this section is unconstitutional because without

justification it chills the right of appeal to the review board. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

Paragraph (g)(4)g of this section, mandating greater deprivation upon an unsuccessful appeal from § 20-17.1, codifies an unnecessary discouragement to review. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

§ 20-11. Application of minors. — (a) The Division shall not grant the application of any minor between the ages of 16 and 18 years for an operator's license or a learner's permit unless such application is signed both by the applicant and by the parent, guardian, husband, wife or employer of the applicant, or, if the applicant has no parent, guardian, husband, wife or employer residing in this State, by some other responsible adult person. It shall be unlawful for any person to sign the application of a minor under the provisions of this section when such application misstates the age of the minor and any person knowingly violating this provision shall be guilty of a misdemeanor.

The Division shall not grant the application of any minor between the ages of 16 and 18 years for an operator's license unless such minor presents evidence of having satisfactorily completed the driver training and safety education courses offered at the public high schools as provided in G.S. 20-88.1 or upon having satisfactorily completed a course of driving instruction offered at a licensed commercial driver training school or an approved nonpublic secondary school, provided instruction offered in such schools shall be approved by the State Commissioner of Motor Vehicles and the State Superintendent of Public Instruction and all expenses for such instruction shall be paid by the persons enrolling in such courses and/or by the schools offering them.

(b) The Division may grant an application for a limited learner's permit of any minor under the age of 16, who otherwise meets the requirements of licensing under this section, when such application is signed by both the applicant and his or her parent or guardian or some other responsible adult with whom the applicant resides and is approved by the Division of Motor Vehicles. Such limited learner's permit shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways for a period of six months, while such minor is accompanied by a parent, guardian, or other

person approved by the Division, who is licensed under this Chapter to operate a motor vehicle and who is actually occupying a seat beside the driver. Provided, however, a limited learner's permit as herein provided shall be issued only to those applicants who have reached the age of 15 years. In the event a minor who has been issued a limited learner's permit under this subsection operates a motor vehicle in violation of any provision herein, the permit shall be cancelled.

Provided a driver who holds a learner's permit only shall not be deemed a male operator under age 25 for the purpose of determining the insurance premium rate for persons insured under automobile property damage and bodily injury liability insurance policies.

(c) The Division may, upon satisfactory proof that a minor between the ages of 16 and 18 years has become a resident of North Carolina and holds a valid motor vehicle operator's license from his prior state of residence but has not completed a course in driver education which meets the requirements of this State, grant to such minor a temporary operator's permit under such terms and conditions as shall be deemed necessary by the Division to allow the minor to operate a motor vehicle in this State in order to obtain the driver education courses necessary for operator's license in North Carolina. Every application for a temporary operator's permit shall be made upon the approved form furnished by the Division. A temporary operator's permit issued pursuant to this section shall be subject to all provisions of law relating to operator's license. (1935, c. 52, s. 6; 1953, c. 355; 1955, c. 1187, s. 8; 1963, c. 968, ss. 2, 2A; 1965, c. 410, s. 3; c. 1171; 1967, c. 694; 1969, c. 37; 1973, c. 191, ss. 1, 2; c. 664, ss. 1, 2; 1975, c. 79; c. 716, s. 5.)

Editor's Note. —

The first 1975 amendment added subsection (c).

The second 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-13. Mandatory revocation of license of provisional licensee. — (a) The operator's license of any person shall be suspended by the Division without preliminary hearing upon notice to the Division of such person's conviction of a motor vehicle moving violation, as specified in subsection (b), committed while such person was still a provisional licensee. A provisional licensee is any licensee who has not attained his eighteenth birthday. A motor vehicle moving violation, as used herein, does not include any of those offenses for which no points under the point system may be assessed by specific reference in G.S. 20-16(c), nor does the term include those equipment violations specified in Part 9 of Article 3 of this Chapter.

(b) The basis for departmental action, and the period of suspension, shall be as follows:

- (1) For conviction of a second motor vehicle moving violation, in any 12-month period, 30 days;
- (2) For conviction of a third such violation, in any 12-month period, three months;
- (3) For conviction of a fourth such violation, in any 12-month period, one year.

After the expiration of six months of any suspension hereunder, the parent or someone standing in loco parentis of the provisional licensee may request a hearing for the purpose of obtaining a license upon a probationary status.

If such provisional licensee demonstrates to the Division that his conduct and attitude is such as to entitle him to favorable consideration, the Division may rescind the remainder of the suspension and allow such provisional licensee to operate motor vehicles under his provisional license in a probationary status. Such provisional licensee must agree

in writing to accept such terms and conditions as the Division may see fit to impose during the term of probation.

(d) The suspension provided for in this section shall be in addition to any other remedies which the Division may have against a licensee under other provisions of law; however, when the license of any person is subject to suspension under this section and at the same time is also subject to suspension or revocation under other provisions of law, such suspensions or revocations shall run concurrently.

(f) Upon receipt of notice on conviction of a licensee's first motor vehicle moving offense, committed while such licensee was a provisional licensee, the Division shall mail to the licensee at his last known address a letter of warning, but failure of the licensee to receive such letter of warning shall not prevent the suspension of his license under this section.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a), (b), (d) and (f).

As the rest of the section was not changed by the amendment, only subsections (a), (b), (d) and (f) are set out.

§ 20-13.1. Revocation of license of provisional licensee upon conviction of moving violation in connection with accident resulting in personal injury or property damage. — The operator's license of a provisional licensee as defined in G.S. 20-13 may be suspended by the Division for a period of 60 days upon notice of such licensee's conviction of one motor vehicle moving violation in connection with a motor vehicle accident resulting in personal injury or property damage of more than three hundred dollars (\$300.00). Upon suspending any license as herein provided, the Division shall immediately notify the licensee, in writing, and, upon the request of the licensee's parent or guardian or someone standing in loco parentis to the child, afford him an opportunity for a hearing as early as practical within 20 days after receipt of the request in the county wherein the licensee resides or at some other place mutually agreed upon. Upon such hearing, the duly authorized agents of the Division may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant documents and may require reexamination. Upon such hearing, the Division may rescind, modify or affirm its order of suspension. (1967, c. 295, s. 2; 1971, c. 437; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-14. Duplicate licenses. — In the event that an operator's or chauffeur's license is lost or destroyed, or if it is necessary to change the name or address thereon, the person to whom the license is issued may, upon payment of a fee of one dollar (\$1.00) and upon furnishing proof satisfactory to the Division that the license has been lost or destroyed, or that the person's name or address has been changed, obtain a duplicate or substitute license. (1935, c. 52, s. 9; 1943, c. 649, s. 2; 1969, c. 783, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-15. Authority of Division to cancel license. — (a) The Division shall have authority to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance thereof hereunder, or that said licensee failed to give the required or correct information in his application, or committed fraud in making such application.

(b) Upon such cancellation, the licensee must surrender the license so cancelled to the Division. (1935, c. 52, s. 10; 1943, c. 649, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places.

§ 20-16. Authority of Division to suspend license. — (a) The Division shall have authority to suspend the license of any operator or chauffeur with or without preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

- (1) Has committed an offense for which mandatory revocation of license is required upon conviction;
- (2) Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage, which accident is obviously the result of the negligence of such driver, and where such property damage has not been compensated for;
- (3) Is an habitually reckless or negligent driver of a motor vehicle;
- (4) Is incompetent to drive a motor vehicle;
- (5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;
- (6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;
- (7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;
- (8) Has been convicted of illegal transportation of intoxicating liquors;
- (9) Has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 and not more than 80 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;
- (10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;
- (10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or
- (11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator or chauffeur not operate a motor vehicle for a period of time.

(b) Pending an appeal from a conviction of any violation of the motor vehicle laws of this State, no driver's or chauffeur's license shall be suspended by the Division of Motor Vehicles because of such conviction or because of evidence of the commission of the offense for which the conviction has been had.

(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator or chauffeur and shall enter therein records of all convictions of such persons for

any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission for the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of operator's or chauffeur's license:

Schedule of Point Values

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No operator's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
All other moving violations	2

The [above] provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses:

- Overloads
- Over length
- Over width
- Over height
- Illegal parking
- Carrying concealed weapon
- Improper plates
- Improper registration
- Improper muffler
- Public drunk within a vehicle
- Possession of liquor
- Improper display of license plates or dealers' tags
- Unlawful display of emblems and insignia
- Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever a licensee accumulates as many as four points hereunder, the Division shall mail a letter of warning to the licensee at his last known address, but failure to receive such warning letter shall not prevent a suspension under this subsection. Whenever any licensee accumulates as many as seven points

or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any 10-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the operator's or chauffeur's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation.

(d) Upon suspending the license of any person as hereinbefore in this section authorized, the Division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, unless a preliminary hearing was held before his license was suspended, as early as practical within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the Division and the licensee agree that such hearing may be held in some other county, and such notice shall contain the provisions of this section printed thereon. Upon such hearing the duly authorized agents of the Division may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the Division shall either rescind its order of suspension, or good cause appearing therefor, may extend the suspension of such license. Provided further upon such hearing, preliminary or otherwise, involving subsections (a)(1) through (a)(10a) of this section, the Division may for good cause appearing in its discretion substitute a period of probation not to exceed one year for the suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Division and such period of probation shall not exceed one year, and any violation of the probation agreement during the probation period shall result in a suspension for the unexpired remainder of the suspension period. The authorized agents of the Division shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provided in connection with hearings held after suspension. (1935, c. 52, s. 11; 1947, c. 893, ss. 1, 2; c. 1067, s. 13; 1949, c. 373, ss. 1, 2; c. 1032, s. 2; 1953, c. 450; 1955, c. 1152, s. 15; c. 1187, ss. 9-12; 1957, c. 499, s. 1; 1959, c. 1242, ss. 1-2; 1961, c. 460, ss. 1, 2(a); 1963, c. 1115; 1965, c. 130; 1967, c. 16; 1971, c. 234, ss. 1, 2; c. 793, ss. 1, 2; c. 1198, ss. 1, 2; 1973, c. 16; c. 17, ss. 1, 2; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

Power to suspend or revoke a driver's license, etc. —

Where the facts as found by the trial court are in exact conformity with the suspension

provisions of subdivision (a)(5), the Department (now Division) has complete authority by law to suspend petitioner's license, and the superior court judge has no authority to substitute his discretion for that of the Department. In re Grubbs, 25 N.C. App. 232, 212 S.E.2d 414 (1975).

§ 20-16.1. Mandatory suspension of driver's license upon conviction of excessive speeding; limited driving permits for first offenders. — (a) Notwithstanding any other provisions of this Article, the Division shall suspend for a period of 30 days the license of any operator or chauffeur without preliminary hearing on receiving a record of such operator's or chauffeur's conviction of exceeding by more than 15 miles per hour the speed limit, either within or outside the corporate limits of a municipality, if such person was also driving at a speed in excess of 55 miles per hour at the time of the offense.

(b) (1) Upon a first conviction only of violating subsection (a), the trial judge may when feasible allow a limited driving privilege or license to the person convicted for proper purposes reasonably connected with the health, education and welfare of the person convicted and his family. For purposes of determining whether conviction is a first conviction, no prior offense occurring more than 10 years before the date of the current offense shall be considered. The judge may impose upon such limited driving privilege any restrictions as in his discretion are deemed advisable including, but not limited to, conditions of days, hours, types of vehicles, routes, geographical boundaries and specific purposes for which limited driving privilege is allowed. Any such limited driving privilege allowed and restrictions imposed thereon shall be specifically recorded in a written judgment which shall be as near as practical to that hereinafter set forth and shall be signed by the trial judge and shall be affixed with the seal of the court and shall be made a part of the records of the said court. A copy of said judgment shall be transmitted to the Division of Motor Vehicles along with any operator's or chauffeur's license in the possession of the person convicted and a notice of the conviction. Such permit issued hereunder shall be valid for such length of time as shall be set forth in the judgment of the trial judge. Such permit shall constitute a valid license to operate motor vehicles upon the streets and highways of this or any other state in accordance with the restrictions noted thereon and shall be subject to all provisions of law relating to operator's or chauffeur's license, not by their nature, rendered inapplicable.

(2) The judgment issued by the trial judge as herein permitted shall as near as practical be in form and content as follows:

STATE OF NORTH CAROLINA	IN THE GENERAL COURT
COUNTY OF	OF JUSTICE
	RESTRICTED DRIVING
	PRIVILEGES

This cause coming on to be heard and being heard before the Honorable, Judge presiding, and it appearing to the court that the defendant, ..., has been convicted of the offense of excessive speeding in violation of G.S. 20-16.1(a), and it further appearing to the court that the defendant should be issued a restrictive driving license and is entitled to the issuance of a restrictive driving privilege under and by the authority of G.S. 20-16.1(b);

Now, therefore, it is ordered, adjudged and decreed that the defendant be allowed to operate a motor vehicle under the following conditions and under no other circumstances.

Name:
 Race: Sex:
 Height: Weight:
 Color of Hair: Color of Eyes:
 Birth Date:
 Driver's License Number:
 Signature of Licensee:
 Conditions of Restriction:
 Type of Vehicle:
 Geographic Restrictions:
 Hours of Restriction:
 Other Restrictions:
 This limited license shall be effective from to subject
 to further orders as the court in its discretion may deem necessary
 and proper.
 This the day of, 19.

.....
 (Judge Presiding)

- (3) Upon conviction of such offense outside the jurisdiction of this State the person so convicted may apply to the resident judge of the superior court of the district in which he resides for limited driving privileges hereinbefore defined. Upon such application the judge shall have the authority to issue such limited driving privileges in the same manner as if he were the trial judge.
- (4) Any violation of the restrictive driving privileges as set forth in the judgment of the trial judge allowing such privileges shall constitute the offense of driving while license has been suspended as set forth in G.S. 20-28. Whenever a person is charged with operating a motor vehicle in violation of the restrictions, the limited driving privilege shall be suspended pending the final disposition of the charge.
- (5) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(c) Upon conviction of a similar second or subsequent offense which offense occurs within one year of the first or prior offense, the license of such operator or chauffeur shall be suspended for 60 days, provided such first or prior offense occurs subsequent to July 1, 1953.

(d) Notwithstanding any other provisions of this Article, the Division shall suspend for a period of 60 days the license of any operator or chauffeur without preliminary hearing on receiving a record of such operator's or chauffeur's conviction of having violated the laws against speeding described in subsection (a) and of having violated the laws against reckless driving on the same occasion as the speeding offense occurred.

(e) The provisions of this section shall not prevent the suspension or revocation of a license for a longer period of time where the same may be authorized by other provisions of law.

(f) Operators or chauffeurs whose licenses have been suspended under the provisions of this section shall not be required to maintain proof of financial responsibility upon reissuance of the license solely because of suspension pursuant to this section. (1953, c. 1223; 1955, c. 1187, s. 15; 1959, c. 1264, s. 4; 1965, c. 133; 1975, c. 716, s. 5; c. 763.)

Editor's Note. — Session Laws 1975, c. 763, designated the former four paragraphs of this section as subsections (a), (d), (e) and (f) and added subsections (b) and (c).

"Division" has been substituted for "Department" in subdivisions (a), (b) and (d) of this section as amended by Session Laws 1975, c. 763.

Pursuant to Session Laws 1975, c. 716, s. 5,

§ 20-16.2. Mandatory revocation of license in event of refusal to submit to chemical tests.

(c) The arresting officer, in the presence of the person authorized to administer a chemical test, shall request that the person arrested submit to a test described in subsection (a). If the person arrested willfully refuses to submit to the chemical test designated by the arresting officer, none shall be given. However, upon the receipt of a sworn report of the arresting officer and the person authorized to administer a chemical test that the person arrested, after being advised of his rights as set forth in subsection (a), willfully refused to submit to the test upon the request of the officer, the Division shall revoke the driving privilege of the person arrested for a period of six months.

(d) Upon receipt of the sworn report required by G.S. 20-16.2(c) the Division shall immediately notify the arrested person that his license to drive is revoked immediately unless said person requests in writing within three days of receipt of notice of revocation a hearing. If at least three days prior to hearing, the licensee shall so request of the hearing officer, the hearing officer shall subpoena the arresting officer and any other witnesses requested by the licensee to personally appear and give testimony at the hearing. If such person requests in writing a hearing, he shall retain his license until after the hearing. The hearing shall be conducted in the county where the arrest was made under the same conditions as hearings are conducted under the provisions of G.S. 20-16(d) except that the scope of such hearing for the purpose of this section shall cover the issues of whether the law-enforcement officer had reasonable grounds to believe the person had been driving or operating a motor vehicle upon a highway or public vehicular area while under the influence of intoxicating liquor, whether the person was placed under arrest, and whether he willfully refused to submit to the test upon the request of the officer. Whether the person was informed of his rights under the provision of G.S. 20-16.2(a)(1), (2), (3), (4) shall be an issue. The Division shall order that the revocation either be rescinded or sustained. If the revocation is sustained, the person shall surrender his license immediately upon notification.

(e) If the revocation is sustained after such a hearing, the person whose driving privilege has been revoked, under the provisions of this section, shall have the right to file a petition in the superior court for a hearing de novo to review the action of the Division in the same manner and under the same conditions as is provided in G.S. 20-25.

(f) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this State has been revoked, the Division shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (c), (d), (e) and (f).

Only the subsections changed by the amendment are set out.

Admission of Test Results, etc. —

The failure of the State to establish that

defendant was accorded the statutory right to have another test, in addition to the others which he was properly accorded, renders the results of the breathalyzer test inadmissible in evidence. *State v. Fuller*, 24 N.C. App. 38, 209 S.E.2d 805 (1974).

§ 20-17. Mandatory revocation of license by Division. — The Division shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction for any of the following offenses when such conviction has become final:

- (5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.
- (11) Conviction of assault with a motor vehicle. (1935, c. 52, s. 12; 1947, c. 1067, s. 14; 1967, c. 1098, s. 2; 1971, c. 619, s. 7; 1973, c. 18, s. 1; c. 1081, s. 3; c. 1330, s. 2; 1975, c. 716, s. 5; c. 831.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the introductory paragraph and in subdivision (5).

The second 1975 amendment, effective July 1, 1975, added subdivision (11).

As the rest of the section was not changed by the amendments, only the introductory paragraph and subdivisions (5) and (11) are set out.

§ 20-17.1. Revocation of license of mental incompetents, alcoholics and habitual users of narcotic drugs. — (a) The Commissioner, upon receipt of notice that any person has been legally adjudicated incompetent or has been involuntarily admitted to an institution for the treatment of alcoholism or drug addiction, shall forthwith make inquiry into the facts for the purpose of determining whether such person is competent to operate a motor vehicle. Unless the Commissioner is satisfied that such person is competent to operate a motor vehicle with safety to persons and property, he shall revoke such person's driving privilege. Provided that if such person requests, in writing, a hearing, he shall retain his license until after the hearing, and if the revocation is sustained after such hearing, the person whose driving privilege has been revoked under the provisions of this section, shall have the right to a review by the review board as provided in G.S. 20-9(g)(4) upon written request filed with the Division.

(e) Notwithstanding the provisions of G.S. 8-53, 8-53.2, 122-8.1 and 122-8.2, the person or persons in charge of any institution as set out in subsection (a) hereinabove shall furnish such information as may be required for the effective enforcement of this section. Information furnished to the Division of Motor Vehicles as provided herein shall be confidential and the Commissioner of Motor Vehicles shall be subject to the same penalties and is granted the same protection as is the department, institution or individual furnishing such information. No criminal or civil action may be brought against any person or agency who shall provide or submit to the Commissioner of Motor Vehicles or his authorized agents the information as required herein.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a) and (e).

As the rest of the section was not changed by the amendment, only subsections (a) and (e) are set out.

Constitutionality. — This section is neither vague nor overbroad. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

A legitimate State interest may be rationally

advanced by the classification drawn in this section, thus it does not deny equal protection of the laws to those involuntarily committed. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

To decide that those whose institutionalization was legally coerced present, as a class, significantly greater highway safety problems and thus require renewed scrutiny as to driving skills is, whatever its wisdom or efficacy or validity in a particular case, not irrational under the equal protection clause. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

That North Carolina has not chosen in this section to include "all alcoholics and drug addicts" is not irrational. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

This section fairly informs those it affects of the standard against which their conduct will be measured, and thus there is no constitutional infirmity presented. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

The Phrase "Is Satisfied" in Subsection (a). — This section imparts an objective standard, and the phrase "is satisfied" refers to the conclusion the Commissioner reaches after his inquiry into the facts for the purpose of determining whether such person is competent to operate a motor vehicle with safety to persons and property. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

There is no substantive constitutional right to drive an automobile. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

But once licenses are issued, their continued possession may become essential in the pursuit of a livelihood, and suspension of issued licenses

thus involves State action that adjudicates important interests of the licensees; in such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

Persons involuntarily committed are entitled to notice and hearing before the Department (now Division) of Motor Vehicles prior to any revocation of their driving privileges. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

The type of "facts" to be looked into and the scope of the "inquiry" are tied to the obvious purpose of this section: to determine driving competency. By themselves they set no standard against which the plaintiff's privilege is judged. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

Subsection (f) of This Section. — Those who seek and lose on review under this section are treated unequally as to the revocation period since § 20-9(g)(4) applies. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

§ 20-19. Period of suspension or revocation. — (a) When a license is suspended under subdivision (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(d) When a license is revoked because of a second conviction for driving or operating a vehicle while under the influence of intoxicating liquor or while under the influence of an impairing drug, occurring within three years after a prior conviction, the period of revocation shall be four years; provided, that the Division may, after the expiration of two years, issue a new license upon satisfactory proof that the former licensee has not been convicted within the past two years with a violation of any provision of the motor vehicle laws, liquor laws or drug laws of North Carolina or any other state and is not an excessive user of alcohol or drugs and upon such terms and conditions which the Division may see fit to impose for the balance of said period of revocation; provided, that as to a license which has been revoked because of a second conviction for driving under the influence of intoxicating liquor or a narcotic drug prior to May 2, 1957, and which has not been restored, the Division may upon the application of the former licensee, and after the expiration of two years of such period of revocation, issue a new license upon satisfactory proof that the former licensee has not been convicted within the past two years with a violation of any provision of the motor vehicle laws, liquor laws or drug laws of North Carolina or any other state and is not an excessive user of alcohol or drugs and upon such terms and conditions which the Division may see fit to impose for the balance of a four-year revocation period, which period shall be computed from the date of the original revocation.

(e) When a license is revoked because of a third or subsequent conviction for driving or operating a vehicle while under the influence of intoxicating liquor or while under the influence of an impairing drug, occurring within five years after a prior conviction, the period of revocation shall be permanent; provided, that the Division may, after the expiration of three years, issue a new license upon satisfactory proof that the former licensee has not been convicted within

the past three years with a violation of any provision of motor vehicle laws, liquor laws or drug laws of North Carolina or any other state and is not an excessive user of alcohol or drugs; provided, that as to a license which has been revoked because of a third or subsequent conviction for driving under the influence of intoxicating liquor or a narcotic drug prior to May 2, 1957, and which license has not been restored, the Division may, upon application of the former licensee and after the expiration of three years of such period of revocation, issue a new license upon satisfactory proof that the former licensee has not been convicted within the past three years with a violation of any provision of the motor vehicle laws, liquor laws or drug laws of North Carolina or any other state and is not an excessive user of alcohol or drugs. When a new license is issued under the provisions of this subsection, it may be issued upon such terms and conditions as the Division may see fit to impose. The terms and conditions imposed by the Division may not exceed a period of three years.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a), (b), (d) and (e).

Only the subsections changed by the amendment are set out.

Subsection (f)'s one-year period applies to §

20-17.1. *Jones v. Penny*, 387 F. Supp. 383 (M.D.N.C. 1974).

§ 20-20. Surrender of licenses. — Whenever any vehicle operator's or chauffeur's license issued by the Division is revoked or suspended under the terms of this Chapter, the licensee shall surrender to the Division all vehicle operator's and chauffeur's licenses and duplicates thereof issued to him by the Division which are in his possession. (1935, c. 52, s. 14; 1943, c. 649, s. 4; 1967, c. 280; 1969, c. 182; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in three places.

§ 20-22. Suspending privileges of nonresidents and reporting convictions. — (a) The privilege of driving a motor vehicle on the highways of this State given to a nonresident hereunder shall be subject to suspension or revocation by the Division in like manner and for like cause as an operator's or chauffeur's license issued hereunder may be suspended or revoked.

(b) The Division is further authorized, upon receiving a record of the conviction in this State of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this State, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident. (1935, c. 52, s. 16; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places.

§ 20-23. Suspending resident's license upon conviction in another state. — The Division is authorized to suspend or revoke the license of any resident of this State upon receiving notice of the conviction as defined in G.S. 20-24(c) of such person in another state of the offenses hereinafter enumerated which, if committed in this State, would be grounds for the suspension or revocation of the license of an operator or chauffeur. The provisions of this section shall apply only for the offenses as set forth in G.S. 20-26(a). (1935, c. 52, s. 17; 1971, c. 486, s. 2; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-23.1. Suspending or revoking operating privilege of person not holding license. — In any case where the Division would be authorized to suspend or revoke the license of a person but such person does not hold a license, the Division is authorized to suspend or revoke the operating privilege of such a person in like manner as it could suspend or revoke his license if such person held an operator's or chauffeur's license, and the provisions of this Chapter governing suspensions, revocations, issuance of a license, and driving after license suspended or revoked, shall apply in the discretion of the Division in the same manner as if the license has been suspended or revoked. (1955, c. 1187, s. 19; 1969, c. 186, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-23.2. Suspension of license for conviction of traffic offense in federal court. — Upon receipt of notice of conviction in any court of the federal government sitting in North Carolina of the offense of driving or operating a vehicle while under the influence of intoxicating liquor or while under the influence of an impairing drug as defined in G.S. 20-19(h), the Division is authorized to revoke the driving privilege of the person convicted in the same manner as if such conviction had occurred in a court of this State. Provided that this section shall apply only to offenses committed on highways in federal parks in this State. (1969, c. 988; 1971, c. 619, s. 11; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-24. When court to forward license to Division and report convictions. — (a) Whenever any person is convicted of any offense for which this Article makes mandatory the revocation of the operator's or chauffeur's license of such person by the Division, the court in which such conviction is had shall require the surrender to it of all operators' and chauffeurs' licenses then held by the person so convicted and the court shall thereupon forward the same, together with a record of such conviction, to the Division within 30 days.

The clerks of court, assistant clerks of court and deputy clerks of court in which any person is convicted, and as a result thereof the revocation or suspension of the operator's or chauffeur's license of such person is required under the provisions of this Chapter, are hereby designated as agents of the Division of Motor Vehicles for the purpose of receiving all operators' and chauffeurs' licenses required to be surrendered under this section, and are

hereby authorized to and shall give to such licensee a dated receipt for any such license surrendered, such receipt to be upon such form as may be approved by the Commissioner of Motor Vehicles. The original of such receipt shall be mailed forthwith to the Driver License Section of the Division of Motor Vehicles together with the operator's or chauffeur's license. Any operator's or chauffeur's license which has been surrendered and for which a receipt has been issued as herein required shall be revoked or suspended as the case may be as of the date shown upon the receipt issued to such person.

(b) Every court having jurisdiction over offenses committed under this Article, or any other law of this State regulating the operation of motor vehicles on highways, shall forward to the Division a record of the conviction of any person in said court for a violation of any [of] said laws, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted. Every court shall also forward to the Division a record of every conviction in which sentence is suspended on condition that the defendant not operate a motor vehicle for a period of time, and such report shall state the period of time for which such condition is imposed; provided that the punishment for the violation of this subsection shall be the same as provided in G.S. 20-7(o).

(c) For the purpose of this Article the term "conviction" shall mean a final conviction. Also, for the purposes of this Article a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction. Also, a defendant shall be treated for the purposes of this Article as having been convicted of any offense under this Chapter as to which he:

- (1) Has been served with process under Article 17, Criminal Process, Chapter 15A of the General Statutes;
- (2) Has failed to appear upon due call of the case; and
- (3) Has failed within 90 days thereafter to submit himself to the jurisdiction of the court to answer the charge.

In addition to the foregoing provisions and for the purpose of this Article, a third or subsequent prayer for judgment continued within any five-year period shall be considered as a final conviction and to this end all orders entering prayer for judgments continued entered by the courts shall be reported to the Division of Motor Vehicles.

(d) After November 1, 1935, no operator's or chauffeur's license shall be suspended or revoked except in accordance with the provisions of this Article. (1935, c. 52, s. 18; 1949, c. 373, ss. 3, 4; 1955, c. 1187, s. 14; 1959, c. 47; 1965, c. 38; 1973, c. 19; 1975, cc. 46, 445; c. 716, s. 5; c. 871, s. 1.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, added "within 30 days" at the end of the first paragraph of subsection (a).

The second 1975 amendment, effective Oct. 1, 1975, added the third sentence, containing subdivisions (1) through (3), in subsection (c).

The third 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout subsections (a) and (b) and substituted "Driver License Section of the Division of Motor Vehicles" for "Driver License Division of the Department of Motor Vehicles" in the second sentence of the second paragraph

of subsection (a). Pursuant to Session Laws 1975, c. 716, s. 5, "Division" has also been substituted for "Department" in the paragraph added to subsection (c) by the fourth 1975 amendment.

The fourth 1975 amendment added the last paragraph in subsection (c).

Session Laws 1975, c. 871, s. 2, provides: "This act shall become effective Jan. 1, 1976, and shall apply only to those prayers for judgment continued which are entered after the effective date of this act."

Applied in *In re Sparks*, 25 N.C. App. 65, 211 S.E.2d 220 (1975).

§ 20-25. Right of appeal to court. — Any person denied a license or whose license has been canceled, suspended or revoked by the Division, except where such cancellation is mandatory under the provisions of this Article, shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district in which the violation was committed, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this Article. (1935, c. 52, s. 19; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places.

§ 20-26. Records; copies furnished. — (a) The Division shall keep a record of proceedings and orders pertaining to all operator's and chauffeur's licenses granted, refused, suspended or revoked. The Division shall keep records of convictions as defined in G.S. 20-24(c) occurring outside North Carolina only for the offenses of exceeding a stated speed limit of 55 miles per hour or more by more than 15 miles per hour, driving while license suspended or revoked, careless and reckless driving, engaging in prearranged speed competition, engaging willfully in speed competition, hit-and-run driving resulting in damage to property, unlawfully passing a stopped school bus, illegal transportation of intoxicating liquors, and the offenses included in G.S. 20-17.

(b) The Division shall furnish certified copies of license records required to be kept by subsection (a) of this section to State, county, municipal and court officials of this State for official use only, without charge.

(c) The Division shall furnish copies of license records required to be kept by subsection (a) of this section to other persons, firms and corporations for uses other than official upon prepayment of the fee therefor, according to the following schedule:

- | | |
|--|---------|
| (1) Limited extract copy of license record, for period up to three years | \$ 1.00 |
| (2) Complete extract copy of license record | 1.00 |
| (3) Certified true copy of complete license record | 3.00 |

All fees received by the Division under the provisions of this subsection shall be paid into and become a part of the "Operator's and Chauffeur's License Fund." (1935, c. 52, s. 20; 1961, c. 307; 1969, c. 783, s. 3; 1971, c. 486, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-27. Availability of records. — All records of the Division pertaining to application and to operator's and chauffeur's license, except the confidential medical report referred to in G.S. 20-7, of the current or previous five years shall be open to public inspection at any reasonable time during office hours. (1935, c. 52, s. 21; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-28. Unlawful to drive while license suspended or revoked. — (a) Any person whose operator's or chauffeur's license has been suspended or revoked other than permanently, as provided in this Chapter, who shall drive any motor vehicle upon the highways of the State while such license is suspended or revoked shall be guilty of a misdemeanor and his license shall be suspended or revoked, as the case may be, for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense; provided, any person whose license has been permanently suspended or revoked under this section may apply for a new license after three years from the commencement of the permanent suspension or revocation. Upon the filing of such application, the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has been of good behavior for a minimum of three years from the last date of suspension or revocation and that his conduct and attitude are such as to entitle him to favorable consideration.

Notwithstanding any other provisions of this section, in those cases of conviction of the offense provided in this section in which the judge and district attorney of the court wherein a conviction for violation of this section was obtained recommend in writing to the Division that the Division examine into the facts of the case and exercise discretion in suspending or revoking the driver's license for the additional periods provided by this section, the Division shall conduct a hearing and may impose a lesser period of additional suspension or revocation than that provided in this section or may refrain from imposing any additional period. If the judge and district attorney hearing said case are not reasonably available to make or refuse such recommendation, then the judge and district attorney presiding and serving over the court of conviction may make the recommendation.

Upon conviction, a violator of this section shall be punished by a fine of not less than two hundred dollars (\$200.00) or imprisonment in the discretion of the court not to exceed two years, or both; provided, however, the restoree of a suspended or revoked operator's or chauffeur's license who operates a motor vehicle upon the streets or highways of the State without maintaining financial responsibility as provided by law shall be punished as for operating without an operator's license.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

Instructions. — Where there was evidence in the record tending to show that defendant's operator's license was permanently revoked, the trial judge erred in not relating anywhere in his instructions to this aspect of the evidence to the

charge in the warrant; but since the case was consolidated for judgment with a case of driving under the influence, fifth offense, and the jail sentence of 12 months therein imposed was supported by the conviction of driving under the influence, fifth offense, the error in the charge in the case of driving while license was permanently revoked was not prejudicial. *State v. Parks*, 24 N.C. App. 314, 210 S.E.2d 288 (1974), cert. denied, 286 N.C. 419, 211 S.E.2d 799 (1975).

Applied in *State v. Phillips*, 25 N.C. App. 313,
212 S.E.2d 906 (1975).

Cited in *State v. Bohannon*, 26 N.C. App. 486,
216 S.E.2d 424 (1975).

§ 20-28.1. Conviction of moving offense committed while driving during period of suspension or revocation of license; hearings upon recommendation of judge and district attorney. — (a) Upon receipt of notice of conviction of any person of a motor vehicle moving offense, such offense having been committed while such person's driving privilege was in a state of suspension or revocation, the Division shall revoke such person's driving privilege for an additional period of time as set forth in subsection (b) hereof.

(b) When a driving privilege is subject to revocation under this section, the additional period of revocation shall be as follows:

- (1) A first such revocation shall be for one year;
- (2) A second such revocation shall be for two years; and
- (3) A third or subsequent such revocation shall be permanent.

(c) Any person whose driving privilege has been permanently revoked under this section may apply for a new license after three years from the commencement of the permanent revocation. Upon the filing of such application, the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has been of good behavior for a minimum of three years from the last date of revocation and that his conduct and attitude are such as to entitle him to favorable consideration.

(d) Notwithstanding any other provisions of this section, in those cases of conviction of the offense provided in this section in which the judge and district attorney of the court wherein a conviction for violation of this section was obtained recommend in writing to the Division that the Division examine into the facts of the case and exercise discretion in suspending or revoking the driver's license for the additional periods provided by this section, the Division shall conduct a hearing and may impose a lesser period of additional suspension or revocation than that provided in this section or may refrain from imposing any additional period. If the judge and district attorney hearing said case are not reasonably available to make or refuse such recommendation, then the judge and district attorney presiding and serving over the court of conviction may make the recommendation. (1965, c. 286; 1969, c. 348; 1971, c. 163; 1973, c. 47, s. 2; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-29. Surrender of license. — Any person operating or in charge of a motor vehicle, when requested by an officer in uniform, or, in the event of accident in which the vehicle which he is operating or in charge of shall be involved, when requested by any other person, who shall refuse to write his name for the purpose of identification or to give his name and address and the name and address of the owner of such vehicle, or who shall give a false name or address, or who shall refuse, on demand of such officer or such other person, to produce his license and exhibit same to such officer or such other person for the purpose of examination, or who shall refuse to surrender his license on demand of the Division, or fail to produce same when requested by a court of this State, shall be guilty of a misdemeanor and upon conviction shall be punished as provided in this Article. Pickup notices for operators' or chauffeurs' licenses or revocation or suspension of license notices and orders or demands issued by the Division for the surrender of such licenses may be served and executed by patrolmen or other peace officers, and such patrolmen and peace

officers, while serving and executing such notices, orders and demands, shall have all the power and authority possessed by peace officers when serving and executing warrants charging violations of the criminal laws of the State. (1935, c. 52, s. 23; 1949, c. 583, s. 7; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places.

Applied in *State v. Keziah*, 24 N.C. App. 298, 210 S.E.2d 436 (1974).

§ 20-30. Violations of license or learner's permit provisions. — It shall be unlawful for any person to commit any of the following acts:

- (4) To fail or refuse to surrender to the Division upon demand any license or learner's permit or the badge of any chauffeur whose license or learner's permit has been suspended, canceled or revoked as provided by law.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (4) are set out.

§ 20-34.1. Unlawful to issue licenses for anything of value except prescribed fees. — It shall be unlawful for any employee of the Division of Motor Vehicles to charge or accept any money or other thing of value except the fees prescribed by law for the issuance of an operator's or chauffeur's license, and the fact that the license is not issued after said employee charges or accepts money or other thing of value shall not constitute a defense to a criminal action under this section. In a prosecution under this section it shall not be a defense to show that the person giving the money or other thing of value or the person receiving the license or intended to receive the same is entitled to a license under the Uniform Driver's License Act. Any person violating this section shall be guilty of a felony and upon conviction shall be punished by imprisonment in the State's prison for not more than five years or by a fine of not more than five thousand dollars (\$5,000) or by both such fine and imprisonment. (1951, c. 211; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the first sentence.

§ 20-36. Ten-year-old convictions not considered. — No conviction of any violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of such conviction. (1971, c. 15; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

ARTICLE 2A.

Afflicted, Disabled or Handicapped Persons.

§ 20-37.1. Motorized wheelchairs or similar vehicles. — Any afflicted or disabled person who is qualified to operate a motorized wheelchair or other

similar vehicle not exceeding 1,000 pounds gross weight, may apply to the Division of Motor Vehicles for a special operator's license and permanent registration plates. When it is made to appear to the satisfaction of the Division of Motor Vehicles that the applicant is qualified to operate such vehicle, and is dependent upon such vehicle as a means of conveyance or as a means of earning a livelihood, said Division shall, upon the payment of a license fee of one dollar (\$1.00) for each such motor vehicle, issue to such applicant for his exclusive personal use a special vehicle operator's license, which shall be renewed annually upon the payment of a fee of fifty cents (50¢), and permanent registration plates for such vehicle. The initial one dollar (\$1.00) fee required by this section shall be in full payment of the permanent registration plates issued for such vehicle and such plates need not thereafter be renewed and such plates shall be valid only on the vehicle for which issued and then only while such vehicle is owned by the person to whom the plates were originally issued.

Any person other than the licensee who shall operate any motor vehicle equipped with any such special license plate as is authorized by this section shall be guilty of a misdemeanor and upon conviction subject to punishment in the discretion of the court. (1949, c. 143; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the first and second sentences.

ARTICLE 2B.

Special Identification Cards for Nonoperators.

§ 20-37.7. Special identification card. — (a) The Division of Motor Vehicles shall upon satisfactory proof of identification issue a special identification card to any person 16 years or older who is a resident of the State of North Carolina and for any reason does not possess a valid driver's license issued by the Division of Motor Vehicles.

(b) Every application for a special identification card shall be made upon the approved form furnished by the Division.

(f) The Division of Motor Vehicles shall maintain hard copies of applications and information pertaining to the recipients of a special identification card and such indices as deemed appropriate, but such information shall not be required to be computerized. The Division may promulgate any rules and regulations it deems necessary for the effective implementation of the provisions of this section.

(h) The Division may utilize the various communications media throughout the State to inform North Carolina residents of the provisions of this section. (1973, c. 438, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a), (b), (f) and (h).

As the rest of the section was not changed by the amendment, only subsections (a), (b), (f) and (h) are set out.

ARTICLE 3.

Motor Vehicle Act of 1937.

Part 2. Authority and Duties of Commissioner and Division.

§ 20-39. Administering and enforcing laws; rules and regulations; agents, etc.; seal. — (a) The Commissioner is hereby vested with the power and is

charged with the duty of administering and enforcing the provisions of this Article and of all laws regulating the operation of vehicles or the use of the highways, the enforcement or administration of which is now or hereafter vested in the Division.

(b) The Commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this Article and any other laws the enforcement and administration of which are vested in the Division.

(c) The Commissioner is authorized to designate and appoint such agents, field deputies, and clerks as may be necessary to carry out the provisions of this Article.

(d) The Commissioner shall adopt an official seal for the use of the Division. (1937, c. 407, s. 4; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-42. Authority to administer oaths and certify copies of records. — (a) Officers and employees of the Division designated by the Commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall charge for the acknowledgment of signatures a fee according to the following schedule:

(1) One signature	\$.50
(2) Two signatures	.75
(3) Three or more signatures	1.00

Funds received under the provisions of this subsection shall be used to defray a part of the costs of distribution of license plates, registration certificates and certificates of title issued by the Division.

(b) The Commissioner and such officers of the Division as he may designate are hereby authorized to prepare under the seal of the Division and deliver upon request a certified copy of any record of the Division, charging a fee of one dollar (\$1.00) for each document so certified, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. Provided that any copy of any record of the Division furnished to State, county, municipal and court officials of this State for official use shall be furnished without charge. (1937, c. 407, s. 7; 1955, c. 480; 1961, c. 861, s. 1; 1967, c. 691, s. 41; c. 1172; 1971, c. 749; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-43. Records of Division. — (a) All records of the Division, other than those declared by law to be confidential for the use of the Division, shall be open to public inspection during office hours.

(b) The Commissioner, upon receipt of notification from another state or foreign country that a certificate of title issued by the Division has been surrendered by the owner in conformity with the laws of such other state or foreign country, may cancel and destroy such record of certificate of title. (1937, c. 407, s. 8; 1947, c. 219, s. 1; 1971, c. 1070, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a) and (b).

§ 20-44. Authority to grant or refuse applications. — The Division shall examine and determine the genuineness, regularity and legality of every application for registration of a vehicle and for a certificate of title therefor, and of any other application lawfully made in the Division, and may in all cases make investigation as may be deemed necessary or require additional information, and shall reject any such application if not satisfied of the genuineness, regularity, or legality thereof or the truth of any statement contained therein, or for any other reason, when authorized by law. (1937, c. 407, s. 9; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-45. Seizure of documents and plates. — The Division is hereby authorized to take possession of any certificate of title, registration card, permit, license, or registration plate issued by it upon expiration, revocation, cancellation, or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued, or which has been unlawfully used. (1937, c. 407, s. 10; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-46. Distribution of synopsis of laws. — The Division may publish a synopsis or summary of the laws of this State regulating the operation of vehicles, and deliver to any person on request a copy thereof without charge. (1937, c. 407, s. 11; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-47. Division may summon witnesses and take testimony. — (a) The Commissioner and officers of the Division designated by him shall have authority to summon witnesses to give testimony under oath or to give written deposition upon any matter under the jurisdiction of the Division. Such summons may require the production of relevant books, papers, or records. (1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (a).

As subsections (b) and (c) were not changed by the amendment, they are not set out.

§ 20-48. Giving of notice. — (a) Whenever the Division is authorized or required to give any notice under this Chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown by the records of the Division. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by the certificate of any officer or employee of the Division or affidavit of any person over 18 years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.

(b) Notwithstanding any other provision of this Chapter at any time notice is now required by registered mail with return receipt requested, certified mail with return receipt requested may be used in lieu thereof and shall constitute valid notice to the same extent and degree as notice by registered mail with return receipt requested. (1937, c. 407, s. 13; 1955, c. 1187, s. 21; 1971, c. 1231, s. 1; 1975, c. 326, s. 3; c. 716, s. 5.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, designated the former provisions of this section as subsection (a) and added subsection (b).

The second 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (a).

Full Signature and Notarization. — There is nothing in this section which requires that the certificate to prove that the notice of revocation was mailed in accordance with the statute contain the full signature of the employee making the certificate or that such certificate be

notarized. *State v. Johnson*, 25 N.C. App. 630, 214 S.E.2d 278 (1975).

Initialed certificate lacking notary's authentication meets all the requirements of this section and provides prima facie evidence of the genuineness of such certificate, the truth of the statements made in such certificate, and the official character of the person who purportedly initialed and executed it. *State v. Johnson*, 25 N.C. App. 630, 214 S.E.2d 278 (1975).

Applied in *State v. Phillips*, 25 N.C. App. 313, 212 S.E.2d 906 (1975).

§ 20-49. Police authority of Division. — The Commissioner and such officers and inspectors of the Division as he shall designate and all members of the Highway Patrol shall have the power:

(9) For the purpose of determining compliance with the provisions of this Chapter, to inspect all files and records of the persons hereinafter designated and required to be kept under the provisions of this Chapter or of the registrations of the Division:

- a. Persons dealing in or selling and buying new, used or junked motor vehicles and motor vehicle parts; and
- b. Persons operating garages or other places where motor vehicles are repaired, dismantled, or stored. (1937, c. 407, s. 14; 1955, c. 554, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the introductory paragraph and in subdivision (9).

As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivision (9) are set out.

**Part 3. Registration and Certificates
of Titles of Motor Vehicles.**

§ 20-50. Owner to secure registration and certificate of title; temporary registration markers. — (a) Except as otherwise provided in this Article, every owner of a vehicle intended to be operated upon any highway of this State and required by this Article to be registered shall, before the same is so operated, apply to the Division for and obtain the registration thereof, the registration plates therefor and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and nonresidents contained in G.S. 20-79, or under temporary registration plates as provided in this Article; Provided that the Commissioner of Motor Vehicles or his duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good cause being shown. It is further provided that when the owner of a vehicle leases such vehicle to a carrier of passengers or property and it is actually used by such carrier in the operation of its business, the registration plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. Provided further that when the owner of a vehicle leases such vehicle to a farmer and it is actually used by such farmer in the operation of his farm, the registration plates may be obtained by the farmer at the applicable farmer rate, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Division and file such evidence of the lease as the Division may require.

(b) The Division may upon receipt of proper application upon a form supplied by the Division and an accompanying fee of three dollars (\$3.00) grant a 10-day temporary registration marker subject to the following limitations and conditions:

- (1) Temporary 10-day registration markers shall be issued only upon proper proof that the applicant has met the applicable financial responsibility requirements.
- (2) Temporary 10-day registration markers shall expire 10 days from the date of issuance.
- (3) Temporary 10-day registration markers may be used only on the vehicle for which issued and may not be transferred, loaned or assigned to another.
- (4) In the event a temporary 10-day registration marker is lost or stolen, notice shall be furnished to the Division.
- (5) The Commissioner shall have the power to make such rules and regulations not inconsistent herewith as he shall deem necessary for the purpose of carrying out the provisions of this section.
- (6) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 shall apply in like manner to temporary 10-day registration markers as is applicable to nontemporary plates not by their nature rendered inapplicable. (1937, c. 407, s. 15; 1943, c. 648; 1945, c. 956, s. 3; 1947, c. 219, s. 2; 1953, c. 831, s. 3; 1957, c. 246, s. 2; 1961, c. 360, s. 1; 1963, c. 552, s. 1; 1973, c. 919; 1975, c. 462; c. 716, s. 5; c. 767, s. 1.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, added the next-to-last sentence of subsection (a).

The second 1975 amendment, effective July 1,

1975, substituted "Division" for "Department" in subsections (a) and (b).

The third 1975 amendment deleted "common" preceding "carrier" in two places near the middle of subsection (a).

§ 20-52. Application for registration and certificate of title. — (a) Every owner of a vehicle subject to registration hereunder shall make application to the Division for the registration thereof and issuance of a certificate of title for such vehicle upon the appropriate form or forms furnished by the Division, and every such application shall bear the signature of the owner written with pen and ink, and said signature shall be acknowledged by the owner before a person authorized to administer oaths, and said application shall contain:

- (1) The name, bona fide residence and mail address of the owner or business address of the owner if a firm, association or corporation;
 - (2) A description of the vehicle, including, insofar as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the serial number of the vehicle, the engine and other identifying numbers of the vehicle and whether new or used, and if a new vehicle, the date of sale and actual date of delivery of vehicle by the manufacturer or dealer to the person intending to operate such vehicle;
 - (3) A statement of the applicant's title and of all liens or encumbrances upon said vehicle and the names and addresses of all lienholders in the order of their priority, and the amount, date and nature of the security agreement;
 - (4) Such further information as may reasonably be required by the Division to enable it to determine whether the vehicle is lawfully entitled to registration and the owner entitled to a certificate of title.
- (1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

§ 20-52.1. Manufacturer's certificate of transfer of new motor vehicle.

(c) Upon sale of a new vehicle by a dealer to a consumer-purchaser, the dealer shall execute in the presence of a person authorized to administer oaths an assignment of the manufacturer's certificate of origin for the vehicle, including in such assignment the name and address of the transferee and no title to a new motor vehicle acquired by a dealer under the provisions of subsections (a) and (b) of this section shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee.

Any dealer transferring title to, or an interest in, a new vehicle shall deliver the manufacturer's certificate of origin duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall deliver the manufacturer's certificate of origin to the lienholder and the lienholder shall forthwith forward the manufacturer's certificate of origin together with the transferee's application for certificate of title and necessary fees to the Division. Any person who delivers or accepts a manufacturer's certificate of origin assigned in blank shall be guilty of a misdemeanor. (1961, c. 835, s. 4; 1967, c. 863; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the second paragraph of subsection (c).

As subsections (a) and (b) were not changed by the amendment, they are not set out.

§ 20-53. Application for specially constructed, reconstructed, or foreign vehicle. — (a) In the event the vehicle to be registered is a specially constructed, reconstructed, or foreign vehicle, such fact shall be stated in the application, and with reference to every foreign vehicle which has been registered outside of this State, the owner shall surrender to the Division all registration cards and certificates of title or other evidence of such foreign registration as may be in his possession or under his control, except as provided in subsection (b) hereof.

(b) Where, in the course of interstate operation of a vehicle registered in another state, it is desirable to retain registration of said vehicle in such other state, such applicant need not surrender, but shall submit for inspection said evidence of such foreign registration, and the Division in its discretion, and upon a proper showing, shall register said vehicle in this State but shall not issue a certificate of title for such vehicle.

(c), (d) Repealed by Session Laws 1965, c. 734, s. 2. (1937, c. 407, s. 18; 1949, c. 675; 1953, c. 853; 1957, c. 1355; 1965, c. 734, s. 2; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a) and (b).

§ 20-54. Authority for refusing registration or certificate of title. — The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

- (1) That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the Division or that the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article;
 - (3) That the Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or other person having valid lien upon such vehicle;
- (1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the introductory paragraph and in subdivisions (1) and (3).

As subdivisions (2), (4) and (5) were not changed by the amendment, they are not set out.

§ 20-55. Examination of registration records and index of stolen and recovered vehicles. — The Division, upon receiving application for any transfer of registration or for original registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall first check the engine and serial numbers shown in the application with its record of registered motor vehicles, and against the index of stolen and recovered motor vehicles required to be maintained by this Article. (1937, c. 407, s. 20; 1971, c. 1070, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-56. Registration indexes. — The Division shall file each application received, and when satisfied as to the genuineness and regularity thereof, and that the applicant is entitled to register such vehicle and to the issuance of a certificate of title, shall register the vehicle therein described and keep a record thereof as follows:

- (4) In the discretion of the Division, in any other manner it may deem advisable. (1937, c. 407, s. 20½; 1949, c. 583, s. 5; 1971, c. 1070, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the introductory paragraph and in subdivision (4).

As subdivisions (1), (2) and (3) were not changed by the amendment, they are not set out.

§ 20-57. Division to issue certificate of title and registration card. — (a) The Division upon registering a vehicle shall issue a registration card and a certificate of title as separate documents.

(b) The registration card shall be delivered to the owner and shall contain upon the face thereof the name and address of the owner, space for owner's signature, the registration number assigned to the vehicle, and such description of the vehicle as determined by the Commissioner, provided that if there are more than two owners the Division may show only two owners on the registration card and indicate that additional owners exist by placing after the names listed "et al." Upon application to the Division, the registered owner may acquire additional copies of the registration card at a fee of fifty cents (50¢) each.

(c) Every owner upon receipt of a registration card, shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers or in the vehicle to which transfer is being effected, as provided by G.S. 20-64 at the time of its operation, and such registration card shall be displayed upon demand of any peace officer or any officer of the Division: Provided, however, any person charged with failing to so carry such registration card shall not be convicted if he produces in court a registration card theretofore issued to him and valid at the time of his arrest: Provided further, that in case of a transfer of a license plate from one vehicle to another under the provisions of G.S. 20-72, evidence of application for transfer shall be carried in the vehicle in lieu of the registration card.

(d) The certificate of title shall contain upon the face thereof the identical information required upon the face of the registration card except the abbreviation "et al." if such appears and in addition thereto the name of all owners, the date of issuance and all liens or encumbrances disclosed in the application for title. All such liens or encumbrances shall be shown in the order of their priority, according to the information contained in such application.

(e) The certificate of title shall also contain upon the reverse side form of assignment of title or interest and warranty thereof, with space for notation of liens and encumbrances upon such vehicle at the time of a transfer.

(f) Certificates of title upon which liens or encumbrances are shown shall be delivered or mailed by the Division to the holder of the first lien or encumbrance.

(g) Certificates of title shall bear thereon the seal of the Division.

(h) Certificates of title need not be renewed annually, but shall remain valid until canceled by the Division for cause or upon a transfer of any interest shown therein. (1937, c. 407, s. 21; 1943, c. 715; 1961, c. 360, s. 2; c. 835, s. 5; 1963, c. 552, s. 2; 1973, c. 72; c. 764, ss. 1-3; c. 1118; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-58. Perfection by indication of security interest on certificate of title. — Except as provided in G.S. 20-58.8, a security interest in a vehicle of a type for which a certificate of title is required shall be perfected only as hereinafter provided.

- (2) If the vehicle is registered in this State, the application for notation of a security interest shall be in the form prescribed by the Division, signed by the debtor, and containing the amount, date and nature of the security agreement, and the name and address of the secured party from whom information concerning the security interest may be obtained. The application must be accompanied by the existing certificate of title unless it is in the possession of a prior secured party. If there is an existing certificate of title issued by this or any other jurisdiction in the possession of a prior secured party, the application for notation of the security interest shall in addition, contain the name and address of such prior secured party.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subdivision (2).

As subdivisions (1) and (3) were not changed by the amendment, they are not set out.

Cited in Moser v. Employers Com. Union Ins. Co. of America, 25 N.C. App. 309, 212 S.E.2d 664 (1975).

§ 20-58.1. Duty of the Division upon receipt of application for notation of security interest. — (a) Upon receipt of an application for notation of security interest, the required fee and accompanying documents required by G.S. 20-58, the Division, if it finds the application and accompanying documents in order, shall either endorse upon the certificate of title or issue a new certificate of title containing, the name and address of each secured party, the amount of each security interest, and the date of perfection of each security interest as determined by the Division. The Division shall deliver or mail the certificate to the first secured party named in it and shall also notify the new secured party that his security interest has been noted upon the certificate of title.

(b) If the certificate of title is in the possession of some prior secured party, the Division, when satisfied that the application is in order, shall procure the certificate of title from the secured party in whose possession it is being held, for the sole purpose of noting the new security interest. Upon request of the Division, a secured party in possession of a certificate of title shall forthwith deliver or mail the certificate of title to the Division. Such delivery of the certificate does not affect the rights of any secured party under his security agreement. (1961, c. 835, s. 6; 1969, c. 838, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-58.2. Date of perfection. — If the application for notation of security interest with the required fee is delivered to the Division within 10 days after the date of the security agreement, the security interest is perfected as of that date. Otherwise, the security interest is perfected as of the date of delivery of the application to the Division. (1961, c. 835, s. 6; 1969, c. 838, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-58.3. Notation of assignment of security interest on certificate of title. — An assignee of a security interest may have the certificate of title endorsed or issued with the assignee named as the secured party, upon delivering to the Division on a form prescribed by the Division, with the required fee, an assignment by the secured party named in the certificate together with the certificate of title. The assignment must contain the address of the assignee from which information concerning the security interest may be obtained. If the certificate of title is in the possession of some other secured party the procedure prescribed by G.S. 20-58.1(b) shall be followed. (1961, c. 835, s. 6; 1969, c. 838, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-58.4. Release of security interest. — (a) Upon the satisfaction or other discharge of a security interest in a vehicle for which the certificate of title is in the possession of the secured party, the secured party shall within 10 days after demand and, in any event, within 30 days, execute a release of his security interest, in the space provided therefor on the certificate or as the Division prescribes, and mail or deliver the certificate and release to the next secured party named therein, or if none, to the owner or other person authorized to receive the certificate for the owner.

(b) Upon the satisfaction or other discharge of a security interest in a vehicle for which the certificate of title is in the possession of a prior secured party, the secured party whose security interest is satisfied shall within 10 days execute a release of his security interest in such form as the Division prescribes and mail or deliver the same to the owner or other person authorized to receive the same for the owner.

(c) An owner, upon securing the release of any security interest in a vehicle shown upon the certificate of title issued therefor, may exhibit the documents evidencing such release, signed by the person or persons making such release, and the certificate of title to the Division which shall, when satisfied as to the genuineness and regularity of the release, issue to the owner either a new certificate of title in proper form or an endorsement or rider attached thereto showing the release of the security interest.

(d) If an owner exhibits documents evidencing the release of a security interest as provided in subsection (c) of this section but is unable to furnish the certificate of title to the Division because it is in possession of a prior secured party, the Division, when satisfied as to the genuineness and regularity of the release, shall procure the certificate of title from the person in possession thereof for the sole purpose of noting thereon the release of the subsequent security interest, following which the Division shall return the certificate of title

to the person from whom it was obtained and notify the owner that the release has been noted on the certificate of title.

(e) If it is impossible for the owner to secure from the secured party the release contemplated by this section, the owner may exhibit to the Division such evidence as may be available showing satisfaction or other discharge of the debt secured, together with a sworn affidavit by the owner that the debt has been satisfied, which the Division may treat as a proper release for purposes of this section when satisfied as to the genuineness, truth and sufficiency thereof. Prior to cancellation of a security interest under the provisions of this subsection, at least 15 days' notice of the pendency thereof shall be given to the secured party at his last known address by the Division by registered letter. (1961, c. 835, s. 6; 1969, c. 838, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-58.6. Duty of secured party to disclose information. — A secured party named in a certificate of title shall, upon written request of the Division, the owner or another secured party named on the certificate, disclose information when called upon by such person, within 10 days after his lien shall have been paid and satisfied, and any person convicted under this section shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than 30 days. (1937, c. 407, s. 23; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-61. Owner dismantling or wrecking vehicle to return evidence of registration. — Any owner dismantling or wrecking any vehicle shall forward to the Division the certificate of title, registration card and other proof of ownership, and the registration plates last issued for such vehicle, unless such plates are to be transferred to another vehicle of the same owner. In that event, the plates shall be retained and preserved by the owner for transfer to such other vehicle. No person, firm or corporation shall dismantle or wreck any motor vehicle without first complying with the requirements of this section. The Commissioner upon receipt of certificate of title and notice from the owner thereof that a vehicle has been junked or dismantled may cancel and destroy such record of certificate of title. (1937, c. 407, s. 25; 1947, c. 219, s. 3; 1961, c. 360, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-62. Sale of motor vehicles to be dismantled. — Any owner who sells a motor vehicle as scrap or to be dismantled or destroyed shall assign the certificate of title thereto to the purchaser, and shall deliver such certificate so assigned to the Division with an application for a permit to dismantle such vehicle. The Division shall thereupon issue to the purchaser a permit to dismantle the same, which shall authorize such person to possess or transport such vehicle or to transfer ownership thereto by endorsement upon such permit. A certificate of title shall not again be issued for such motor vehicle in the event it is scrapped, dismantled, or destroyed. In any case, where the owner for any

reason fails to send in title for a junked or dismantled vehicle, the Division shall have authority to take possession of such title for cancellation. (1937, c. 407, s. 26; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in three places.

§ 20-63. Registration plates to be furnished by the Division; requirements; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance. — (a) The Division upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer or semitrailer and for every other motor vehicle. Registration plates issued by the Division under this Article shall be and remain the property of the State, and it shall be lawful for the Commissioner or his duly authorized agents to summarily take possession of any plate or plates which he has reason to believe is being illegally used, and to keep in his possession such plate or plates pending investigation and legal disposition of the same. Whenever the Commissioner finds that any registration plate issued for any vehicle pursuant to the provisions of this Article has become illegible or is in such a condition that the numbers thereon may not be readily distinguished, he may require that such registration plate, and its companion when there are two registration plates, be surrendered to the Division. When said registration plate or plates are so surrendered to the Division, a new registration plate or plates shall be issued in lieu thereof without charge. The owner of any vehicle who receives notice to surrender illegible plate or plates on which the numbers are not readily distinguishable and who willfully refuses to surrender said plates to the Division shall be guilty of a misdemeanor.

(h) Commission Contracts for Issuance of Plates and Certificates. — All registration plates, registration certificates and certificates of title issued by the Division, outside of those issued from the Raleigh offices of the said Division and those issued and handled through the United States mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Division for the issuance of such plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina and the Division shall make a reasonable effort in every locality, except as hereinbefore noted, to enter into a commission contract for the issuance of such plates and certificates and a record of these efforts shall be maintained in the Division. In the event the Division is unsuccessful in making commission contracts as hereinbefore set out it shall then issue said plates and certificates through the regular employees of the Division. Whenever registration plates, registration certificates and certificates of title are issued by the Division through commission contract arrangements, the Division shall provide proper supervision of such distribution. Commission contracts entered into hereunder shall provide for the payment of compensation at a rate per registration plate as may be set by the General Assembly. Nothing contained in this subsection will allow or permit the operation of fewer outlets in any county in this State than are now being operated. (1937, c. 407, s. 27; 1943, c. 726; 1951, c. 102, ss. 1-3; 1955, c. 119, s. 1; 1961, c. 360, s. 4; c. 861, s. 2; 1963, c. 552, s. 6; c. 1071; 1965, c. 1088; 1969, c. 1140; 1971, c. 945; 1973, c. 629; 1975, c. 716, s. 5.)

Editor's Note. —
The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a) and (h).

As the rest of the section was not changed by the amendment, only subsections (a) and (h) are set out.

§ 20-63.1. Division may cause plates to be reflectorized. — The Division of Motor Vehicles is hereby authorized to cause vehicle license plates for 1968 and future years to be completely treated with reflectorized materials designed to increase visibility and legibility of license plates at night. (1967, c. 8; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-64. Transfer of registration plates to another vehicle. — (a) Except as otherwise provided in this Article, registration plates shall be retained by the owner thereof upon disposition of the vehicle to which assigned, and may be assigned to another vehicle, belonging to such owner and of a like vehicle category within the meaning of G.S. 20-87 and 20-88, upon proper application to the Division and payment of a transfer fee and such additional fees as may be due because the vehicle to which the plates are to be assigned requires a greater registration fee than that vehicle to which the license plates were last assigned. In cases where the plate is assigned to another vehicle belonging to such owner, and is not of a like vehicle category within the meaning of G.S. 20-87 and 20-88, the owner shall surrender the plate to the Division and receive therefor a plate of the proper category, and the unexpired portion of the fee originally paid by the owner for the plate so surrendered shall be a credit toward the fee charged for the new plate of the proper category. Provided, that the owner shall not be entitled to a cash refund when the registration fee for the vehicle to which the plates are to be assigned is less than the registration fee for that vehicle to which the license plates were last assigned. Provided, however, registration plates may not be transferred under this section after December 31 of the year for which issued. An owner assigning or transferring plates to another vehicle as provided herein shall be subject to the same assessments and penalties for use of the plates on another vehicle or for improper use of the plates, as he could have been for the use of the plates on the vehicle to which last assigned. Provided, however, that upon compliance with the requirements of this section, the registration plates of vehicles owned by and registered in the name of a corporation may be transferred and assigned to a like vehicle category within the meaning of G.S. 20-87 and 20-88, upon the showing that the vehicle to which the transfer and assignment is to be made is owned by a corporation which is a wholly owned subsidiary of the corporation applying for such transfer and assignment.

(f) Whenever the owner of a registered vehicle transfers or assigns his interest to another, such transferor may, by surrendering the registration plate to the Division, secure a refund of the unexpired portion of such plate on a monthly basis, beginning the first day of the month following surrender of the plate to the Division, provided, that the annual license fee for such surrendered plate is sixty dollars (\$60.00) or more. No such refund shall be made unless the owner or transferor can furnish proof of financial responsibility upon such registered vehicle effective until the date of the surrender of the plate.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a) and (f).

As the rest of the section was not changed by the amendment, only subsections (a) and (f) are set out.

§ 20-64.1. Revocation of license plates by Utilities Commission. — The license plates of any carrier of persons or property by motor vehicle for compensation may be revoked and removed from the vehicles of any such carrier for willful violation of any provision of either the North Carolina Truck Act of 1947 or the Bus Act of 1949, or for the willful violation of any lawful rule or regulation made and promulgated by the North Carolina Utilities Commission under said acts. To that end said Commission shall have power upon complaint or upon its own motion, after notice and hearing under the rules of evidence prescribed in G.S. 62-18, to order the license plates of any such offending carrier revoked and removed from the vehicles of such carrier for a period not exceeding 30 days, and it shall be the duty of the Division of Motor Vehicles to execute such orders made by the North Carolina Utilities Commission upon receipt of a certified copy of the same.

This section shall be in addition to and independent of other provisions of law for the enforcement of the motor carrier laws of this State. (1951, c. 1120; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the last sentence of the first paragraph.

§ 20-64.2. Permit for emergency use of registration plate. — The Commissioner may, if in his opinion it is equitable, grant to the licensee a special permit for the use of a registration plate on a vehicle other than the vehicle for which the plate was issued, when the vehicle for which such plate was issued is undergoing repairs in a regular repair shop or garage.

Application for such permit shall be made on forms provided by the Division and must show, in addition to such other information as may be required by the Commissioner, that an emergency exists which would warrant the issuance of such permit.

Such permit shall be evidenced by a certificate issued by the Commissioner and which shall show the time of issuance, the person to whom issued, the motor number, serial number or identification number of the vehicle on which such plate is to be used and shall be in the immediate possession of the person operating such vehicle at all times while operating the same. And such certificate shall be valid only so long as the vehicle for which the registration plate has been issued shall remain in the repair shop or garage but not to exceed a period of 20 days from its issuance. The person to whom the permit provided in this section is issued shall be liable for any additional license fees or penalties that might accrue by reason of the provisions of §§ 20-86 and 20-96 of the General Statutes. (1957, c. 402; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the second paragraph.

§ 20-66. Renewal of registration; semipermanent plates issued; renewal sticker annually. — (a) Application for renewal of a vehicle registration shall be made by the owner upon proper application and by payment of the registration fee for such vehicle, as provided by law. The Division may receive and grant applications for renewal of registration at any time prior to expiration of registration.

(b) For the registration period beginning January 1, 1975, the Division, upon proper application for renewal of registration for private passenger motor vehicles, shall issue a new registration plate and registration card. For the

registration period beginning January 1, 1976, and all subsequent registration periods, the Division, upon application for renewal of registration, shall, in lieu of a new registration plate, issue one or more stickers, tabs or other suitable devices denoting the registration period for which issued; provided that for the registration periods beginning January 1, 1978, and thereafter, the Division may, as it deems advisable in the discretion of the Commissioner, issue new registration plates together with such stickers, tabs or other devices; provided further, the provisions of this subsection shall not apply to special issue plates, including but not limited to official plates, legislator plates, horseless carriage plates, personalized registered plates, civil air patrol plates, amateur radio operator plates, national guard plates, and handicapped person plates.

(c) Stickers, tabs or other devices issued hereunder shall be displayed as prescribed by the Commissioner. Except where the physical differences between the stickers, tabs, or devices and registration plates by their nature render any provision of this Chapter inapplicable, all provisions of this Chapter relating to registration plates shall apply to stickers, tabs or devices.

(d) The Division may also provide for the issuance of license plates for motor vehicles with the dates of expiration thereof to vary from month to month so as to approximately equalize the number that expire during the year. (1937, c. 407, s. 30; 1955, c. 554, s. 3; 1973, c. 1389, s. 1; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-67. Notice of change of address or name. — (a) Whenever any person, after making application for or obtaining the registration of a vehicle or a certificate of title, shall move from the address named in the application or shown upon a registration card or certificate of title, such person shall within 10 days thereafter notify the Division in writing of his old and new addresses.

(b) Whenever the name of any person who has made application for or obtained the registration of a vehicle or a certificate of title is thereafter changed by marriage or otherwise, such person shall thereafter forward or cause to be forwarded to the Division the certificate of title and to make application for correction of the certificate on forms provided by the Division. (1937, c. 407, s. 31; 1955, c. 554, s. 4; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a) and (b).

§ 20-68. Replacement of lost or damaged certificates, cards and plates. — (a) In the event any registration card or registration plate is lost, mutilated, or becomes illegible, the owner or legal representative of the owner of the vehicle for which the same was issued, as shown by the records of the Division, shall immediately make application for and may obtain a duplicate or a substitute or a new registration under a new registration number, as determined to be most advisable by the Division, upon the applicant's furnishing under oath information satisfactory to the Division and payment of required fee.

(b) If a certificate of title is lost, stolen, mutilated, destroyed or becomes illegible, the first lienholder or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the Division, shall promptly make application for and may obtain a duplicate upon furnishing information satisfactory to the Division. It shall be mailed to the first lienholder named in it or, if none, to the owner. The Division shall not issue a new certificate

of title upon application made on a duplicate until 15 days after receipt of the application. A person recovering an original certificate of title for which a duplicate has been issued shall promptly surrender the original certificate to the Division. (1937, c. 407, s. 32; 1961, c. 360, s. 7; c. 835, s. 7; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-69. Division authorized to assign new engine number. — The owner of a motor vehicle upon which the engine number or serial number has become illegible or has been removed or obliterated shall immediately make application to the Division for a new engine or serial number for such motor vehicle. The Division, when satisfied that the applicant is the lawful owner of the vehicle referred to in such application is hereby authorized to assign a new engine or serial number thereto, and shall require that such number, together with the name of this State, or a symbol indicating this State, be stamped upon the engine, or in the event such number is a serial number, then upon such portion of the motor vehicle as shall be designated by the Division. (1937, c. 407, s. 33; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-70. Division to be notified when another engine is installed or body changed. — (a) Whenever a motor vehicle registered hereunder is altered by the installation of another engine in place of an engine, the number of which is shown in the registration records, or the installation of another body in place of a body, the owner of such motor vehicle shall immediately give notice to the Division in writing on a form prepared by it, which shall state the number of the former engine and the number of the newly installed engine, the registration number of the motor vehicle, the name of the owner and any other information which the Division may require. Whenever another engine has been substituted as provided in this section, and the notice given as required hereunder, the Division shall insert the number of the newly installed engine upon the registration card and certificate of title issued for such motor vehicle.

(b) Whenever a new engine or serial number has been assigned to and stamped upon a motor vehicle as provided in § 20-69, or whenever a new engine has been installed or body changed as provided in this section, the Division shall require the owner to surrender to the Division the registration card and certificate of title previously issued for said vehicle. The Division shall also require the owner to make application for a duplicate registration card and a duplicate certificate of title showing the new motor or serial number thereon or new style of body, and upon receipt of such application and fee, as for any other duplicate title, the Division shall issue to said owner a duplicate registration and a duplicate certificate of title showing thereon the new number in place of the original number or the new style of body. (1937, c. 407, s. 34; 1943, c. 726; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-71. Altering or forging certificate of title, registration card or application, a felony; reproducing or possessing blank certificate of title. —

(a) Any person who, with fraudulent intent, shall alter any certificate of title, registration card issued by the Division, or any application for a certificate of title or registration card, or forge or counterfeit any certificate of title or registration card purported to have been issued by the Division under the provisions of this Article, or who, with fraudulent intent, shall alter, falsify or forge any assignment thereof, or who shall hold or use any such certificate, registration card, or application, or assignment, knowing the same to have been altered, forged or falsified, shall be guilty of a felony and upon conviction thereof shall be punished in the discretion of the court.

(b) It shall be unlawful to reproduce by any means or possess a blank North Carolina motor vehicle certificate of title or facsimile thereof. The provisions of this subsection shall not apply to agents or employees of the Division while acting in the course and scope of their employment or any printing company or its employees while employed by the Division to print or reproduce such certificates of title while said company or its employees are acting within the scope of such employment. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00), imprisonment for not more than six months or both such fine and imprisonment. (1937, c. 407, s. 35; 1959, c. 1264, s. 2; 1971, c. 99; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

Part 4. Transfer of Title or Interest.

§ 20-72. Transfer by owner. — (a) Whenever the owner of a registered vehicle transfers or assigns his title or interests thereto, he shall remove the license plates. The registration card and plates shall be forwarded to the Division unless the plates are to be transferred to another vehicle as provided in G.S. 20-64. If they are to be transferred to and used with another vehicle, then the endorsed registration card and the plates shall be retained and preserved by the owner. If such registration plates are to be transferred to and used with another vehicle, then the owner shall make application to the Division for assignment of the registration plates to such other vehicle under the provisions of G.S. 20-64. Such application shall be made within 20 days after the date on which such plates are last used on the vehicle to which theretofore assigned.

(b) In order to assign or transfer title or interest in any motor vehicle registered under the provisions of this Article, the owner shall execute in the presence of a person authorized to administer oaths an assignment and warranty of title on the reverse of the certificate of title in form approved by the Division, including in such assignment the name and address of the transferee; and no title to any motor vehicle shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee. The provisions of this section shall not apply to any foreclosure or repossession under a chattel mortgage or conditional sales contract or any judicial sale.

Any person transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together

with the transferee's application for new title and necessary fees to the Division within 20 days. Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a misdemeanor.

The title to a salvage vehicle shall be forwarded to the Division as provided in G.S. 20-109.1.

(c) When the Division finds that any person other than the registered owner of a vehicle has in his possession a certificate of title to the vehicle on which there appears an endorsement of an assignment of title but there does not appear in the assignment any designation to show the name and address of the assignee or transferee, the Division shall be authorized and empowered to seize and hold said certificate of title until the assignor whose name appears in the assignment appears before the Division to complete the execution of the assignment or until evidence satisfactory to the Division is presented to the Division to show the name and address of the transferee. (1937, c. 407, s. 36; 1947, c. 219, ss. 4, 5; 1955, c. 554, ss. 5, 6; 1961, c. 360, s. 8; c. 835, s. 8; 1963, c. 552, ss. 3, 4; 1971, c. 678; 1973, c. 1095, s. 2; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

Cited in Moser v. Employers Com. Union Ins. Co. of America, 25 N.C. App. 309, 212 S.E.2d 664 (1975).

§ 20-73. New owner to secure new certificate of title. — The transferee, within 20 days after the purchase of any vehicle, shall present the certificate of title endorsed and assigned as hereinbefore provided, to the Division and make application for a new certificate of title for such vehicle except as otherwise permitted in G.S. 20-75 and 20-76. Any transferee willfully failing or refusing to make application for title shall be guilty of a misdemeanor. (1937, c. 407, s. 37; 1939, c. 275; 1947, c. 219, s. 6; 1961, c. 360, s. 9; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-74. Penalty for failure to make application for transfer within the time specified by law. — It is the intent and purpose of this Article that every new owner or purchaser of a vehicle previously registered shall make application for transfer of title within 20 days after acquiring same, or see that such application is sent in by the lienholder with proper fees, and responsibility for such transfer shall rest on the purchaser. Any person, firm or corporation failing to do so shall pay a penalty of two dollars (\$2.00) in addition to the fees otherwise provided in this Article. It is further provided that any dealer or owner who shall knowingly make any false statement in any application required by this Division as to the date a vehicle was sold or acquired shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than 30 days. All moneys collected under this section shall go to the State Highway Fund. (1937, c. 407, s. 38; 1939, c. 275; 1961, c. 360, s. 10; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-75. When transferee is dealer or insurance company. — When the transferee of any vehicle registered under the foregoing provision of this Article is a licensed dealer who holds the same for resale and operates the same only for purpose of demonstration under a dealer's number plate, or a duly licensed insurance company taking such vehicle for sale or disposal for salvage purposes where such title is taken as a part of a bona fide claim settlement transaction and only for the purpose of resale, such transferee shall not be required to register such vehicle nor forward the certificate of title to the Division as provided in G.S. 20-73. To assign or transfer title or interest in such vehicle, the dealer or insurance company shall execute in the presence of a person authorized to administer oaths a reassignment and warranty of title on the reverse of the certificate of title in form approved by the Division, including in such reassignment the name and address of the transferee, and title to such vehicle shall not pass or vest until such reassignment is executed and the motor vehicle delivered to the transferee.

The dealer transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest in the motor vehicle is obtained from the transferee in payment of the purchase price or otherwise, the dealer shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together with the transferee's application for new certificate of title and necessary fees to the Division within 20 days. Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a misdemeanor.

The title to a salvage vehicle shall be forwarded to the Division as provided in G.S. 20-109.1. (1937, c. 407, s. 39; 1961, c. 835, s. 9; 1963, c. 552, s. 5; 1967, c. 760; 1973, c. 1095, s. 3; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-76. Title lost or unlawfully detained; bond as condition to issuance of new certificate. — (a) Whenever the applicant for the registration of a vehicle or a new certificate of title thereto is unable to present a certificate of title thereto by reason of the same being lost or unlawfully detained by one in possession, or the same is otherwise not available, the Division is hereby authorized to receive such application and to examine into the circumstances of the case, and may require the filing of affidavits or other information; and when the Division is satisfied that the applicant is entitled thereto and that G.S. 20-72 has been complied with, it is hereby authorized to register such vehicle and issue a new registration card, registration plate or plates and certificates of title to the person entitled thereto, upon payment of proper fees.

(b) Whenever the applicant for a new certificate of title is unable to satisfy the Division that he is entitled thereto as provided in subsection (a) of this section, the applicant may nevertheless obtain issuance of a new certificate of title by filing a bond with the Division as a condition to the issuance thereof. The bond shall be in the form prescribed by the Division and shall be executed by the applicant. It shall be accompanied by the deposit of cash with the Division, be executed as surety by a person, firm or corporation authorized to conduct a surety business in this State or be in the nature of a real estate bond as described in G.S. 20-279.24(a). The bond shall be in an amount equal to one and one-half times the value of the vehicle as determined by the Division and conditioned to indemnify any prior owner or lienholder, any subsequent purchaser of the vehicle or person acquiring any security interest therein, and

their respective successors in interest, against any expense, loss or damage, reason of the issuance of the certificate of title to the vehicle or on account of any defect in or undisclosed security interest in the right, title and interest of the applicant in and to the vehicle. Any person damaged by issuance of the certificate of title shall have a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this State and the currently valid certificate of title is surrendered to the Division, unless the Division has been notified of the pendency of an action to recover on the bond. (1937, c. 407, s. 40; 1947, c. 219, s. 7; 1961, c. 360, s. 11; c. 835, s. 10; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-77. Transfer by operation of law; sale under mechanic's or storage lien; unclaimed vehicles. — (a) Whenever the title or interest of an owner in or to a vehicle shall pass to another by operation of law, as upon order in bankruptcy, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise than by voluntary transfer, the transferee shall secure a new certificate of title upon proper application, payment of the fees provided by law, and presentation of the last certificate of title, if available and such instruments or documents of authority or certified copies thereof as may be sufficient or required by law to evidence or effect a transfer of interest in or to chattels in such cases.

(b) In the event of transfer as upon inheritance, devise or bequest, the Division shall, upon a receipt of a certified copy of a will, letters of administration and/or a certificate from the clerk of the superior court showing that the motor vehicle registered in the name of the decedent owner has been assigned to his widow as part of her year's support, transfer both title and license as otherwise provided for transfers. If a decedent dies intestate and no administrator has qualified or the clerk of superior court has not issued a certificate of assignment as part of the widow's year's allowance, or if a decedent dies testate with a small estate and leaving a purported will, which, in the opinion of the clerk of superior court, does not justify the expense of probate and administration and probate and administration is not demanded by any interested party entitled by law to demand same, and provided that the purported will is filed in the public records of the office of the clerk of the superior court, the Division may upon affidavit executed by all heirs effect such transfer. The affidavit shall state the name of the decedent, date of death, that the decedent died intestate or testate and no administration is pending or expected, that all debts have been paid or that the proceeds from the transfer will be used for that purpose, the names, ages and relationship of all heirs and devisees (if there be a purported will), and the name and address of the transferee of the title. A surviving spouse may execute the affidavit and transfer the interest of the decedent's minor or incompetent children where such minor or incompetent does not have a guardian. A transfer under this subsection shall not affect the validity nor be in prejudice of any creditor's lien.

(c) **Mechanic's or Storage Lien.** — In any case where a vehicle is sold under a mechanic's or storage lien, or abandoned property, the Division shall be given a 20-day notice as provided in G.S. 20-114.

(d) An operator of a place of business for garaging, repairing, parking or storing vehicles for the public in which a vehicle remains unclaimed for 30 days, or the landowners upon whose property a motor vehicle has been abandoned for

more than 60 days, shall, within five days after the expiration of that period, report the vehicle as unclaimed to the Division. Failure to make such report shall constitute a misdemeanor punishable by fine not to exceed fifty dollars (\$50.00) or imprisonment not to exceed 30 days, or both, in the discretion of the court.

Any vehicle which remains unclaimed after report is made to the Division may be sold by such operator or landowner in accordance with the provisions relating to the enforcement of liens and the application of proceeds of sale of Article 1 of Chapter 44A.

(e) Any person, who shall sell a vehicle to satisfy a mechanic's or storage lien or any person who shall sell a vehicle as upon order in bankruptcy, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise by operation of law, shall remove any license plates attached thereto and return them to the Division. (1937, c. 407, s. 41; 1943, c. 726; 1945, cc. 289, 714; 1955, c. 296, s. 1; 1959, c. 1264, s. 3; 1961, c. 360, ss. 12, 13; 1967, c. 562, s. 8; 1971, cc. 230, 512, 876; 1973, c. 1386, ss. 1, 2; c. 1446, s. 21; 1975, c. 438, s. 2; c. 716, s. 5.)

Editor's Note. —

The first 1975 amendment rewrote the second paragraph of subsection (d), which formerly detailed the procedure for sale of vehicles.

The second 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a), (b), (c), (d) and (e).

§ 20-78. When Division to transfer registration and issue new certificate; recordation. — (a) The Division, upon receipt of a properly endorsed certificate of title, application for transfer thereof and payment of all proper fees, shall issue a new certificate of title as upon an original registration. The Division, upon receipt of an application for transfer of registration plates, together with payment of all proper fees, shall issue a new registration card transferring and assigning the registration plates and numbers thereon as upon an original assignment of registration plates.

(b) The Division shall maintain a record of certificates of title issued, maintaining at all times the records of the last two owners.

The Commissioner is hereby authorized and empowered to provide for the photographic or photostatic recording of certificate of title records in such manner as he may deem expedient. The photographic or photostatic copies herein authorized shall be sufficient as evidence in tracing of titles of the motor vehicles designated therein, and shall also be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted. (1937, c. 407, s. 42; 1943, c. 726; 1947, c. 219, s. 8; 1961, c. 360, s. 14; 1971, c. 1070, s. 4; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a) and (b).

Part 5. Issuance of Special Plates.

§ 20-79. Registration by manufacturers and dealers. — (a) Every manufacturer of or dealer in motor vehicles, trailers or semitrailers shall apply to the Motor Vehicle Division for a license as such upon official forms and shall in his application give the name of the manufacturer or dealer and his bona fide address of each partner; if a corporation, the name of the corporation and the state of incorporation; the bona fide address of the place of business; whether a dealer in new vehicles or in used vehicles and shall state how long in business. Upon receipt of said application the Division shall upon the payment of fees as required by law issue a license to such applicant, together with number plates,

which plates shall bear thereon a distinctive number, the name of this State, which may be abbreviated, the year for which issued, together with the word dealer or a distinguishing symbol indicating that such plate or plates are issued to a dealer. The plates so issued may during the calendar year for which issued be transferred from one vehicle to another owned and operated by such manufacturer or dealer. The license and plates issued under this section shall be in lieu of the registration of such vehicle.

Any person to whom license and number plates are issued under the provisions of this subsection upon discontinuing business as a dealer or manufacturer shall forthwith surrender to the Division license and all number plates so issued to him.

No person, firm, or corporation shall engage in the business of buying, selling, distributing or exchanging motor vehicles, trailers or semitrailers in this State unless he or it qualifies for and obtains the license required by this section.

Any person, firm, or corporation violating any provision of this subsection shall be guilty of a misdemeanor and for each offense shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000).

(b) Every manufacturer of or dealer in motor vehicles shall obtain and have in his possession a certificate of title issued by the Division to such manufacturer or dealer of each vehicle owned and operated upon the highways by such manufacturer or dealer, except that a certificate of title shall not be required or issued for any new vehicle to be sold as such by a manufacturer or dealer prior to the sale of such vehicle by the manufacturer or dealer; and except that any dealer or any employee of any dealer may operate any motor vehicle, trailer or semitrailer, the property of the dealer, for the purpose of furthering the business interest of the dealer in the sale, demonstration and servicing of motor vehicles, trailers and semitrailers, of collecting accounts, contacting prospective customers and generally carrying out routine business necessary for conducting a general motor vehicle sales business: Provided, that no use shall be made of dealer's demonstration plates on vehicles operated in any other business dealers may be engaged in: Provided further, that dealers may allow the operation of motor vehicles owned by dealers and displaying dealer's demonstration plates in the personal use of persons other than those employed in the dealer's business: Provided further, that said persons shall, at all times while operating a motor vehicle under the provisions of this section, have in their possession a certificate on such form as approved by the Commissioner from the dealer, which shall be valid for not more than 96 hours.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a) and (b).

As subsections (c), (d) and (e) were not changed by the amendment, they are not set out.

§ 20-79.1. Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates. — (a) The Division may, subject to the limitations and conditions hereinafter set forth, deliver temporary registration plates or markers designed by said Division to a dealer duly registered under the provisions of this Article who applies for at least 25 such plates or markers and who encloses with such application a fee of one dollar (\$1.00) for each plate or marker for which application is made. Such application shall be made upon a form prescribed and furnished by the Division. Dealers, subject to the limitations and conditions hereinafter set forth, may issue such temporary registration plates or markers to owners of vehicles, provided that such owners shall comply with the pertinent provisions of this section.

(b) Every dealer who has made application for temporary registration plates or markers shall maintain in permanent form a record of all temporary

registration plates or markers delivered to him, and shall also maintain in permanent form a record of all temporary registration plates or markers issued by him, and in addition thereto, shall maintain in permanent form a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers that the Division may require. Each record shall be kept for a period of at least one year from the date of entry of such record. Every dealer shall allow full and free access to such records during regular business hours, to duly authorized representatives of the Division and to peace officers.

(c) Every dealer who issues temporary registration plates or markers shall also issue a temporary registration certificate upon a form furnished by the Division and deliver with the registration plate or marker to the owner and shall on the day that he issued such plate or marker, send to the Division a copy of the temporary registration issuance.

(d) A dealer shall not issue, assign, transfer, or deliver temporary registration plates or markers to anyone other than a bona fide purchaser or owner of a vehicle being sold by such dealer, nor shall a dealer issue a temporary registration plate or marker without first obtaining from said purchaser or owner a written application for the titling and registration of the purchased vehicle with the prescribed fees therefor, which application and fees the said dealer shall immediately forward to the Division by mail or messenger or by messenger to a local license agency; nor shall a dealer issue a temporary registration plate to anyone purchasing a vehicle that has unexpired registration plates, which registration plates are to be transferred to such purchaser; nor shall a dealer lend to anyone or use on any vehicle that he may own, temporary registration plates or markers: Provided that dealers are hereby authorized to issue temporary markers to nonresidents for the purpose of removing a vehicle purchased in this State, without collecting a registration fee or requiring an application for titling and registration. It shall be unlawful for any person to issue any temporary registration plate or marker containing any misstatement of fact or knowingly insert any false information upon the face thereof.

(e) Every dealer who issues temporary plates or markers shall insert clearly and indelibly on the face of each temporary registration plate or marker the date of issuance and expiration, the make, motor and serial numbers of the vehicle for which issued and such other information as the Division may require.

(f) If the Division finds that the provisions of this section or the directions of the Division are not being complied with by the dealer, he may suspend, after a hearing, the right of a dealer to issue temporary registration plates or markers.

(g) Every person to whom temporary registration plates or markers have been issued shall permanently destroy such temporary registration plates or markers immediately upon receiving the annual registration plates from the Division: Provided, that if the annual registration plates are not received within 20 days of the issuance of the temporary registration plates or markers, the owner shall, notwithstanding, immediately upon the expiration of such 20-day period, permanently destroy the temporary registration plates or markers.

(h) Temporary registration plates or markers shall expire and become void upon the receipt of the annual registration plates from the Division, or upon the rescission of a contract to purchase a motor vehicle, or upon the expiration of 20 days from the date of issuance, depending upon whichever event shall first occur. No refund or credit or fees paid by dealers to the Division for temporary registration plates or markers shall be allowed, except in the event that the Division discontinues the issuance of temporary registration plates or markers or unless the dealer discontinues business. In this event the unissued registration plates or markers with the unissued registration certificates shall be returned to the Division and the dealer may petition for a refund.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a), (b), (c), (d), (e), (f), (g) and (h).

As subsections (i), (j) and (k) were not changed by the amendment, they are not set out.

§ 20-79.2. Transporter registration. — (a) A person engaged in a business requiring the limited operation of motor vehicles to facilitate the manufacture or construction of cabs or bodies or the foreclosure or repossession of such motor vehicles may apply to the Commissioner for special registration to be issued to and used by such person upon the following conditions:

- (1) Application for Registration. — Only one application shall be required from each person, and such application for registration under this section shall be filed with the Commissioner of Motor Vehicles in such form and detail as the Commissioner shall prescribe, setting forth:
 - a. The name and residence address of applicant; if an individual, the name under which he intends to conduct business; if a partnership, the name and residence address of each member thereof, and the name under which the business is to be conducted; if a corporation, the name of the corporation and the name and residence address of each of its officers.
 - b. The complete address or addresses of the place or places where the business is to be conducted.
 - c. Such further information as the Commissioner may require.
- (2) Applications for registration under this section shall be verified by the applicant, and the Commissioner may require the applicant for registration to appear at such time and place as may be designated by the Commissioner for examination to enable him to determine the accuracy of the facts set forth in the written application, either for initial registration or renewal thereof.
- (3) Fees. — The annual fee for such registration under this section or renewal thereof shall be nineteen dollars (\$19.00), plus an annual fee of six dollars (\$6.00) for each set of plates. The application for registration and number plates shall be accompanied by the required annual fee. There shall be no refund of registration fee or fees for number plates in the event of suspension, revocation or voluntary cancellation of registration. There shall be no quarterly reduction in fees under this section.
- (4) Issuance of Certificate. — If the Commissioner approves the application, he shall issue a registration certificate in such form as he may prescribe. A registrant shall notify the Commissioner of any change of address of his principal place of business within 30 days after such change is made, and the Commissioner shall be authorized to cancel the registration upon failure to give such notice.
- (5) Use. — Transporter number plates issued under this section may be transferred from vehicle to vehicle, but shall be used only for the limited operation of vehicles in connection with the manufacture or construction of cabs or bodies or with the foreclosure or repossession of vehicles owned or controlled by the registrant.
- (6) Suspension, Revocation or Refusal to Issue or to Renew a Registration. — The Commissioner may deny the application of any person for registration under this section and may suspend or revoke a registration or refuse to issue a renewal thereof if he determines that such applicant or registrant has:
 - a. Made a material false statement in his application;
 - b. Used or permitted the use of number plates contrary to law;
 - c. Been guilty of fraud or fraudulent practices; or

d. Failed to comply with any of the rules and regulations of the Commissioner for the enforcement of this section or with any provisions of this Chapter applicable thereto.

(b) The Commissioner of Motor Vehicles may make all rules and regulations he may deem necessary for the proper administration of this section, particularly with regard to the requirements of evidence of financial responsibility of applicants for transporter plates. (1961, c. 360, s. 21; 1969, c. 600, s. 1; 1975, c. 222.)

Editor's Note. — The 1975 amendment inserted "the manufacture or construction of cabs or bodies or" following "facilitate" in the introductory paragraph, and "the manufacture

or construction of cabs or bodies or with the" preceding "foreclosure" in subdivision (5), of subsection (a).

§ 20-80. National guard plates. — The Commissioner shall cause to be made each year a sufficient number of motor vehicle license plates to furnish each member of the North Carolina national guard with one thereof, said license plates to be in the same form and character as other license plates now or hereafter authorized by law to be used upon private passenger vehicles registered in this State, except that such license plates shall bear on the face thereof the following words "National Guard." The said license plates shall be issued only to members of the North Carolina national guard, and for which license plates the Commissioner shall collect fees in an amount equal to the fees collected for the licensing and registering of private vehicles not registered for more than 4,000 pounds. The Adjutant General of North Carolina shall furnish the Commissioner annually with an estimate of the number of such distinctive plates required. In addition, the Adjutant General of North Carolina shall furnish to the Commissioner each year, prior to the date that licenses are issued, a list of the officers of the North Carolina national guard, which said list shall contain the rank of each officer listed in the order of his seniority in the North Carolina national guard, and the said license plates to be set aside for officer personnel shall be numbered beginning with the number one and in numerical sequence thereafter up to and including the number 1600, according to seniority, the senior officer being issued the license bearing the numeral one. Enlisted personnel applying for such distinctive plates shall present to the Division of Motor Vehicles proof of membership in the North Carolina national guard by means of certificate signed by the commanding officer of applicant on forms as may be agreed upon by the Adjutant General of North Carolina and the Division of Motor Vehicles. If a holder of such distinctive license plate shall be discharged from the North Carolina national guard under other than honorable conditions, he shall within 30 days exchange such distinctive plate for a standard plate. (1937, c. 407, s. 44; 1941, c. 36; 1949, c. 1130, s. 7; 1955, c. 490; 1961, c. 360, s. 16; 1967, c. 700; 1973, c. 1432; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the next-to-the-last sentence.

§ 20-81. Official license plates. — Official license plates issued to State officials shall be subject to the same fees and transfer provisions as provided in G.S. 20-87 and 20-64 respectively and shall be issued as follows:

- (1) Senate and Congressional. — Official plates issued to the United States Senators shall bear the words "U.S. Senate," be numbered 1 and 2, and shall be issued on the basis of seniority. The official plates issued to United States Congressmen shall bear the words "U.S. House" and be numbered 1 through 11 and shall be issued on the basis of congressional districts.
- (2) North Carolina General Assembly. — Official plates issued to members of the North Carolina State Senate or House of Representatives shall bear the words "Senate" or "House" followed by the Senator's or Representative's assigned seat number.
- (3) Judicial. — Official plates issued to the judiciary shall be issued as follows:
 - a. Supreme Court. — Official plates shall be issued upon request to the Chief Justice and Associate Justices of the Supreme Court of North Carolina which shall bear the letter "J" followed by a numerical designation from 1 through 7. The Chief Justice upon request shall be issued the plate bearing number 1 and the remaining plates shall be issued upon request to the Associate Justices on the basis of seniority. Retired members of the Supreme Court shall receive an official plate upon request similar in every respect to the plates issued to the regular justices bearing the numerical designation of his or her position of seniority at the time of retirement except the numerical designation shall be followed with the letter "X." Official plates J-8 and J-9 in this series shall be reserved. Official plate J-10 shall be issued upon request to the Administrative Office of the Courts.
 - b. Court of Appeals. — Official plates issued to the Chief Judge and Associate Judges of the North Carolina Court of Appeals shall bear the letter "J" followed by a numerical designation from 11 through 19. The Chief Judge shall be issued upon request the official plate bearing number 11 and the remaining plates shall be issued upon request to the Associate Judges on the basis of seniority. Retired members of the North Carolina Court of Appeals serving as emergency judges shall receive an official plate upon request similar in every respect to the plates issued to regular judges bearing the numerical designation of his or her position as to seniority at the time of retirement except the numerical designation shall be followed with the letter "X." Official plate J-20 shall be reserved.
 - c. Superior Court. — Official plates shall be issued to the various senior resident judges of the superior court upon request and shall bear the letter "J" followed by a numerical designation equal to the sum of the numerical designation of their respective judicial districts plus 20. Where there is more than one resident judge of the superior court within a district, official plates shall upon request be issued to other resident judges serving within the district similar to the official plate to be issued upon request to the senior resident judge of the district except the numerical designation on each subsequent plate shall be followed by a letter of the alphabet beginning with the letter "A," which shall be indicative of the recipient's position as to seniority.
 - d. Superior Court. — Special judges and emergency judges of the superior court shall be issued an official plate bearing the letter

"J" with a numerical designation as designated by the Administrative Office of the Courts with the approval of the Chief Justice of the Supreme Court of North Carolina. Retired judges shall be issued a similar plate except that the numerical designation shall be followed by the letter "X."

- e. U.S. District Court Judges. — Official plates shall be issued upon request to the district judges of the United States District Court serving in North Carolina and shall bear the letter "J" and a numerical designation as designated by the Administrative Office of the Courts with the approval of the Chief Justice of the Supreme Court of North Carolina. Retired judges shall be issued a similar plate except that the numerical designation shall be followed by the letter "X."
- f. North Carolina District Court Judges. — An official plate shall be issued upon request to each chief judge of the district court of North Carolina which shall bear the letter "J" followed by a numerical designation equal to the sum of the numerical designation of their respective judicial districts plus 100 and all other judges of the district court serving within the same judicial district shall, upon request, be issued an official plate bearing the same letter and numerical designation as appears on the official plate issued to the chief district judge of the judicial district except that on each subsequent official plate issued within a district, the numerical designation shall be followed by a letter of the alphabet beginning with the letter "A" which shall be indicative of the recipient's position as to seniority. Retired judges shall be issued a similar plate except that the numerical designation shall be followed by the letter "X."
- g. District Attorneys. — Official plates shall be issued upon request to the various district attorneys which plate shall bear the letters "DA" followed by a numerical designation indicative of his judicial district.

(4) Elective and Appointive. — Official plates issued to elective and appointive members of State government shall bear number designations beginning with number 1 which shall be assigned to the Governor of North Carolina and numbers following thereafter shall be issued in the following order:

- 2. Lieutenant Governor of North Carolina
- 3. Speaker of the House of Representatives
- 4. President Pro Tempore of the Senate
- 5. Secretary of State
- 6. State Auditor
- 7. State Treasurer
- 8. Superintendent of Public Instruction
- 9. Attorney General
- 10. Commissioner of Agriculture
- 11. Commissioner of Labor
- 12. Commissioner of Insurance
- 13. (Not to be assigned)
- 14. Speaker Pro Tempore of the House
- 15. Legislative Services Officer
- 16. Secretary of Administration
- 17. Secretary of Natural and Economic Resources
- 18. Secretary of Revenue
- 19. Secretary of Human Resources
- 20. Secretary of Commerce

- 21. Secretary of the Department of Correction
- 22. Secretary of Cultural Resources
- 23. Secretary of Military and Veterans' Affairs
- 24-29. To be reserved for and assigned to members of the Governor's staff at the direction of the Governor.
- 30-41. To be reserved for and assigned to members of the Advisory Budget Commission at the direction of the Governor.
- 42. Chairman, State Board of Education
- 43. President, U.N.C. System
- 44. Chairman, A.B.C. Board
- 45. Member, A.B.C. Board
- 46. Member, A.B.C. Board
- 47. Assistant Commissioner of Agriculture
- 48. Assistant Commissioner of Agriculture
- 49. Deputy Secretary of State
- 50. Deputy State Treasurer
- 51. Assistant State Treasurer
- 52. Deputy Commissioner, Department of Labor
- 53. Chief Deputy, Department of Insurance
- 54. Assistant Commissioner of Insurance
- 55-65. Shall be reserved for and assigned to members of the Attorney General's staff, deputies and assistants only. Specific number assignments shall be at the direction of the Attorney General.
- 66-70. Shall be reserved for and assigned, upon request, to members of the Utilities Commission. Number 66 to be upon request assigned to the Chairman of the Utilities Commission with the remaining numbers to be assigned upon request to the remaining members of the Utilities Commission on the basis of seniority.
- 71-76. Shall be reserved for and assigned upon request to members of the Parole Commission. Number 71 to be upon request assigned to the Chairman of the Parole Commission with the remaining numbers to be assigned upon request to the remaining members of the Parole Commission on the basis of seniority.
- 77-85. Shall be reserved for and assigned upon request to members of the State Ports Authority. Specific number assignments to such members shall be at the direction of the Governor.
- 86-109. Shall be reserved for and assigned upon request to members of the Board of Natural and Economic Resources. Specific number assignments to such members shall be at the direction of the Governor.
- (5) Department of Transportation. — Official plates shall be issued upon request to various members of divisions of the Department of Transportation which shall bear the letters "DOT" followed by a number designation from 1 through 85. Specific number assignments to members of divisions of the Department of Transportation shall be at the direction of the Governor. (1937, c. 407, s. 45; 1961, c. 360, s. 17; 1973, c. 47, s. 2; 1975, c. 865.)

Editor's Note. — The 1973 amendment substituted "judicial district" for "solicitorial district" in paragraph g of subdivision (3).

Session Laws 1975, c. 865, ratified June 26, 1975, and effective July 1, 1975, rewrote this section, which formerly provided only that official license plates should be subject to the transfer provisions in § 20-64, to read as set out above.

This section was also rewritten by Session Laws 1975, c. 432, ratified May 28, 1975, and made effective Jan. 1, 1976. It is possible that c. 865, having the later ratification date, could be interpreted as repealing c. 432, or that c. 432, having the later effective date, could be interpreted as repealing c. 865 as of Jan. 1, 1976. The section as rewritten by c. 432 is set out below.

Section as Amended by Session Laws 1975, c. 432. — Session Laws 1975, c. 432, ratified May 28, 1975, and effective Jan. 1, 1976, rewrote this section to read as follows:

“§ 20-81. Official license plates. — (a) License plates issued to State officials by the Division of Motor Vehicles of the Department of Transportation, upon which is inscribed any special numbering or designation different from the numbering and designation inscribed upon plates issued to the general public pursuant to G.S. 20-63, shall be assessed a fee of ten dollars (\$10.00), in addition to any fees charged under

G.S. 20-87 and 20-88. These plates shall be subject to the same transfer provisions as provided in G.S. 20-64.

“(b) The revenue derived from the additional fee for such plates shall be placed in a separate fund designated the “Official’s Registration Plate Fund.” After deducting the costs of the plates, plus budgetary requirements for handling and issuance, to be determined by the Commissioner of Motor Vehicles, any remaining moneys derived from the additional fee for such plates shall be periodically transferred in accordance with G.S. 20-81.3(c).”

§ 20-81.1. Special plates for amateur radio operators.

(b) Application for special registration plates shall be made on forms which shall be provided by the Division of Motor Vehicles and shall contain proof satisfactory to the Division that the applicant holds an unrevoked and unexpired official amateur radio license and shall state the call letters which have been assigned to the applicant. Applications must be filed prior to 60 days before the day when regular registration plates for the year are made available to motor vehicle owners.

(c) Special registration plates issued pursuant to this section shall be replaced annually to the same extent as regular registration plates are replaced. These plates shall be valid during the year for which issued. If the amateur radio license of a person holding a special plate issued pursuant to this section shall be cancelled or rescinded by the Federal Communications Commission, such person shall immediately return the special plates to the Division of Motor Vehicles.

(d) The provisions of this section shall apply to calendar years beginning after December 31, 1974. The Division of Motor Vehicles is authorized to, and shall, make such provisions prior to January 1, 1975, as are necessary for the issuance for the year 1975 of the special plates provided for in this section.

(1975, c. 716, s. 5.)

Editor’s Note.—

The 1975 amendment, effective July 1, 1975, substituted “Division” for “Department” in subsections (b), (c) and (d).

As subsections (a) and (e) were not changed by the amendment, they are not set out.

§ 20-81.3. Special personalized registration plates.

(b) An owner who desires personalized registration plates shall make application for such plates on forms which shall be provided by the Division of Motor Vehicles and pay the sum of ten dollars (\$10.00) annually, which shall be in addition to the regular motor vehicle registration fee. Once an owner has obtained personalized plates, he, where possible, will have first priority on those plates for the following years provided he makes timely and appropriate application; provided, however, that the Commissioner shall not issue a personalized license plate pursuant to this section except upon written application therefor on a form furnished by the Commissioner in which the applicant certifies that his operator’s or chauffeur’s license has not been revoked or suspended under Article 2 of Chapter 20 of the General Statutes within two years prior to the date of the application; and provided, further, that any personalized license plate issued pursuant to this section shall be cancelled and recalled by the Commissioner and the application fee forfeited in the event that the Commissioner determines that a false application has been submitted.

(d) Repealed by Session Laws 1975, c. 716, s. 5, effective July 1, 1975.

(e) Special personalized registration plate shall mean any registration plate bearing any combination of letters or numerals, or both, other than that which the Division determines would normally be issued sequentially to an applicant for original or renewal vehicle registration.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (b) and (e) and repealed subsection (d), which provided that the Governor's Advisory Committee on Beautification should act in an

advisory capacity to the Board of Transportation and make recommendation concerning beautification of highways.

As the other subsections were not changed by the amendment, they are not set out.

§ 20-81.4. Free registration plates to disabled veterans and former prisoners of war. — (a) From and after January 1, 1970, the North Carolina Division of Motor Vehicles shall provide and issue free of charge to each disabled veteran in this State registration and registration plates for either one automobile or one pickup truck, where a pickup truck is the disabled veteran's only mode of transportation and is not used for hire, a disabled veteran being, for the purpose of this section, a veteran of World War I, World War II or Korean service or Vietnam service, having served in the military, naval, marines or air services of the United States, who is a resident of North Carolina and who is entitled to compensation under the laws administered by the Veterans Administration and who is rated as one hundred percent (100%) service-connected disabled or has suffered one or more of the following due to disability incurred in or aggravated by active military, naval, marine or air service of the United States during one or more conflicts:

- (1) Loss or permanent loss of use of one or both feet;
- (2) Loss or permanent loss of use of one or both hands;
- (3) Permanent impairment of vision of both eyes of the following status: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees in the better eye.

(a1) From and after January 1, 1976, the North Carolina Division of Motor Vehicles shall provide and issue on a first-come first-serve basis to each ex-prisoner of war in this State registration and special P.O.W. registration plates for either one automobile or one pickup truck, where a pickup truck is the ex-prisoner of war's only mode of transportation and is not used for hire, an ex-prisoner of war being, for the purpose of this subsection, an American service person captured and held prisoner by forces hostile to the United States while serving in the armed forces of the United States in World War I, World War II, Korean service or Vietnam service, who was a resident of North Carolina at the time he entered that period of service during which he became a prisoner of war.

(b) The registration plates provided for by this section shall be red, white and blue with colors in such order as prescribed by the Division of Motor Vehicles.

(c1) The registration plate provided for by this section for ex-prisoners of war shall be issued at no additional fee and only upon proof as may be required by the Division of Motor Vehicles as to ex-prisoners of war's status and proof of financial responsibility as required by the motor vehicle laws of North Carolina.

(1975, cc. 221, 584; c. 716, s. 5.)

Editor's Note. — The first 1975 amendment, effective Jan. 1, 1976, substituted "red, white and blue with colors in such order" for "in colors" in subsection (b).

The second 1975 amendment, effective July 1, 1975, added subsections (a1) and (c1).

The third 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (a), (a1), (b) and (c1).

As the rest of the section was not changed by the amendments, only subsections (a), (a1), (b) and (c1) are set out.

§ 20-81.5. Civil Air Patrol plates. — (a) The Commissioner shall cause to be made each year sufficient number of automobile license plates to furnish each member of the North Carolina Wing of the Civil Air Patrol with not more than two thereof, said license plates to be in the same form and character as other license plates now or hereinafter authorized by law to be used upon private passenger vehicles registered in this State, except that such license plates shall bear on the face thereof the following: the words "North Carolina," the year designation, and the words "Civil Air Patrol." The said license plates shall be issued only to members of the North Carolina Wing of the Civil Air Patrol and for each license plate the Commissioner shall collect a fee of five dollars (\$5.00) in addition to the fees in an amount equal to the fees collected for the licensing and registering of private vehicles. The Commander of the North Carolina Wing of the Civil Air Patrol shall furnish the Commissioner annually with a list of the number of such distinctive plates required accompanied by the five dollar (\$5.00) fee referred to hereinabove and such list shall contain the rank of each officer listed in order of his seniority in the North Carolina Civil Air Patrol. The said license plates to be set aside for officer personnel shall be numbered beginning with the number 201 and running in numerical sequence thereafter up to and including the number 500, according to seniority; the senior officer being issued the plate bearing the number 201. Enlisted personnel, senior members and cadet members applying for such distinctive plates shall, upon application and payment of the required fee, receive such plates in numerical sequence beginning with the number 501. Applications for such distinctive license plates shall be on forms as may be agreed upon by the Wing Commander of the North Carolina Civil Air Patrol and the Division of Motor Vehicles. If a holder of such a distinctive license plate shall be discharged from the North Carolina Civil Air Patrol under other than honorable conditions, he shall within 30 days exchange such distinctive plate for a standard plate.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

§ 20-81.6. Special plates for Class D citizens radio station operators.

(b) Application for special registration plates shall be made on forms which shall be provided by the Division of Motor Vehicles and shall contain proof satisfactory to the Division that the applicant holds an unrevoked and unexpired official Class D citizens radio station license and shall state the call letters which have been assigned to the applicant. Applications must be filed prior to 60 days before the day when regular registration plates for the year are made available to motor vehicle owners.

(c) Special registration plates issued pursuant to this section shall be replaced annually to the same extent as regular registration plates are replaced. These plates shall be valid during the year for which issued. If the Class D citizens radio station license of a person holding a special plate issued pursuant to this section shall be cancelled or rescinded by the Federal Communications

Commission, such person shall immediately return the special plates to the Division of Motor Vehicles.

(d) The provisions of this section shall apply to calendar years beginning after December 31, 1974. The Division of Motor Vehicles is authorized to, and shall, make such provisions prior to January 1, 1975, as are necessary for the issuance for the year 1975 of the special plates provided for in this section.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (b), (c) and (d).

As subsections (a) and (e) were not changed by the amendment, they are not set out.

§ 20-82. Manufacturer or dealer to keep record of vehicles received or sold. — Every manufacturer or dealer shall keep a record of all vehicles received or sold containing such information regarding same as the Division may require. (1937, c. 407, s. 46; 1965, c. 106; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

Part 6. Vehicles of Nonresidents of State, etc.

§ 20-84. Vehicles owned by State, municipalities or orphanages, etc.; certain vehicles operated by local chapters of American National Red Cross. — The Division upon proper proof being filed with it that any motor vehicle for which registration is herein required is owned by the State or any department thereof, or by any county, township, city or town, or by any board of education, or by any orphanage or civil air patrol, or incorporated emergency rescue squad, shall collect one dollar (\$1.00) for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the State or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the State or some department thereof or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church-owned bus used exclusively for transporting children and parents to Sunday School and church services and for no other purpose.

In lieu of the annual one dollar (\$1.00) registration provided for in this section, the Division may for the license year 1950 and thereafter provide for a permanent registration of the vehicles described in this section and issue permanent registration plates for such vehicles. The permanent registration plates issued pursuant to this paragraph shall be of a distinctive color and shall bear thereon the word "permanent." Such plates shall not be subject to renewal and shall be valid only on the vehicle for which issued. For the permanent registration and issuance of permanent registration plates provided for in this paragraph, the Division shall collect a fee of one dollar (\$1.00) for each vehicle so registered and licensed.

The provisions of this section are hereby made applicable to vehicles owned by a rural fire department, agency or association.

The Division of Motor Vehicles shall issue to the North Carolina Tuberculosis Association, Incorporated, or any local chapter or association of said corporation, for a fee of one dollar (\$1.00) for each plate a permanent registration plate which

need not be thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is owned by said North Carolina Tuberculosis Association, Incorporated, or any local chapter or local association thereof and operated exclusively in this State for the purpose of diagnosis, treatment and discovery of tuberculosis. The initial one dollar (\$1.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plates issued for such vehicle operated as a mobile X-ray unit, and such plates need not thereafter be renewed, and such plates should be valid only on the vehicle for which issued and then only so long as the vehicle shall be operated for the purposes above described and for which the plates were originally issued.

The Division of Motor Vehicles shall issue to the American National Red Cross, upon application of any local chapter thereof and payment of a fee of one dollar (\$1.00) for each plate, a permanent registration plate, which need not be thereafter renewed, for all disaster vans, bloodmobiles, handivans, and such sedans and station wagons as are used for emergency or disaster work, and operated by a local chapter in this State in the business of the American National Red Cross. Such registration plate shall be valid only for the vehicle for which issued and then only so long as the vehicle shall be operated as above described. In the event of transfer of ownership to any other person, firm or corporation, or transfer or reassignment of any vehicle bearing such registration plate to any chapter or association of the American National Red Cross in any other state, territory or country, the registration plate assigned to such vehicle shall be surrendered to the Division of Motor Vehicles.

In lieu of all other registration requirements, the Commissioner shall each year assign to the State Highway Patrol, upon payment of one dollar (\$1.00) per registration plate, a sufficient number of regular registration plates of the same letter prefix and in numerical sequence beginning with number 100 to meet the requirements of the State Highway Patrol for use on Division vehicles assigned to the State Highway Patrol. The commander of the Patrol shall, when such plates are assigned, issue to each member of the State Highway Patrol a registration plate for use upon the Division vehicle assigned to him pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle operated by the Patrol. An index of such assignments of registration plates shall be kept at each State Highway Patrol radio station and a copy thereof shall be furnished to the registration division of the Division. Information as to the individual assignments of such registration plates shall be made available to the public upon request to the same extent and in the same manner as regular registration information. The commander, when necessary, may reassign registration plates provided that such reassignment shall be made to appear upon the index required herein within 20 days after such reassignment.

The Division of Motor Vehicles shall upon appropriate certification of financial responsibility issue to sheltered workshops recognized or approved by the Division of Vocational Rehabilitation Services of the Department of Human Resources upon application and payment of a fee of one dollar (\$1.00) for each plate, a permanent registration plate for vehicles registered to and operated by such sheltered workshops. The initial one dollar (\$1.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plate issued for such vehicle operated by a sheltered workshop and such plates need not thereafter be renewed, and such plates shall be valid only when attached to the vehicle for which issued and then only so long as the vehicle is operated by the sheltered workshop designated on the registration card.

On and after January 1, 1972, permanent registration plates used on all vehicles owned by the State of North Carolina or a department thereof shall be of a distinctive color and design which shall be readily distinguishable from all other permanent registration plates issued pursuant to this section or G.S. 20-84.1. For the purpose of carrying out the intent of this paragraph, all vehicles

owned by the State of North Carolina or a department thereof in operation as of October 1, 1971, and bearing a permanent registration shall be reregistered during the months of October, November and December, 1971, and upon reregistration, registration plates issued for such vehicles shall be of a distinctive color and design as provided for hereinabove. (1937, c. 407, s. 48; 1939, c. 275; 1949, c. 583, s. 1; 1951, c. 388; 1953, c. 1264; 1955, cc. 368, 382; 1967, c. 284; 1969, c. 800; 1971, c. 460, s. 1; 1975, c. 548; c. 716, s. 5.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, added the seventh paragraph.

The second 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-84.1. Permanent plates for city buses. — The Division may for the license year 1950 and thereafter provide for a permanent registration and issue permanent registration plates for city buses and trackless trolleys when such buses and trolleys are operated under franchises authorizing the use of city streets, but no bus or trackless trolley shall be registered or licensed under this section if it is operated under a franchise authorizing an intercity operation. The permanent registration plates issued pursuant to the provisions of this section shall be of a distinctive color and shall bear thereon the word "permanent." Such plates shall not be subject to renewal and shall be valid only on the vehicle for which issued. For the permanent registration and issuance of permanent registration plates as provided for in this section, the Division shall collect a fee of one dollar (\$1.00) for each vehicle so registered and licensed. (1949, c. 583, s. 6; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment,

effective July 1, 1975, substituted "Division" for "Department" in two places.

Part 6.1. Rental Vehicles.

§ 20-84.2. Definition; reciprocity; Commissioner's powers.

(d) Upon payment by the owner of the prescribed fee, the Division shall issue registration certificates and plates for the percentage of vehicles determined by the Commissioner. Thereafter, all rental vehicles properly identified and licensed in any state, territory, province, country or the District of Columbia, and belonging to such owner, shall be permitted to operate in this State on an interstate or intrastate basis. (1959, c. 1066; 1971, c. 808; 1973, c. 1446, s. 23; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the first sentence of subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

Part 7. Title and Registration Fees.

§ 20-85. Schedule of fees. — There shall be paid to the Division for the issuance of certificates of title, transfer of registration and replacement of registration plates fees according to the following schedules:

- (1) Each application for certificate of title \$2.00
- (2) Each application for duplicate or corrected certificate of title 2.00
- (3) Each application of reposessor for certificate of title 2.00
- (4) Each transfer of registration 2.00
- (5) Each set of replacement registration plates 5.00

- | | |
|--|------|
| (6) Each application for duplicate registration certificate | .50 |
| (7) Each application for recording supplementary lien | 2.00 |
| (8) Each application for removing a lien from a certificate of title | 2.00 |

The fees collected under subdivisions (7) and (8) of this section shall be placed in a special fund designated the "Lien Recording Fund" and shall be used under the direction and supervision of the Secretary of Administration for the administration of the laws of this State relating to the perfection of security interest in vehicles. (1937, c. 407, s. 49; 1943, c. 648; 1947, c. 219, s. 9; 1955, c. 554, s. 4; 1961, c. 360, s. 19; c. 835, s. 11; 1975, c. 430; c. 716, s. 5; c. 727; c. 879, s. 46.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, increased the fees in subdivisions (1) through (5), (7) and (8) from \$1.00 to \$2.00.

The second 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the introductory paragraph.

The third 1975 amendment, effective July 1, 1975, increased the fee in subdivision (5) from \$1.00 to \$5.00.

The fourth 1975 amendment substituted "Secretary of Administration" for "Assistant Director of the Budget" in the second paragraph.

§ 20-86.1. International Registration Plan. — (a) The registration fees required under this Article may be proportioned for vehicles which qualify and are licensed under the provisions of the International Registration Plan.

(b) Notwithstanding any other provisions of this Chapter, the Commissioner is hereby authorized to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of any agreement entered pursuant to the International Registration Plan. (1975, c. 767, s. 2.)

§ 20-87. Passenger vehicle registration fees. — There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

- (5) **Private Passenger Vehicles.** — There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of private passenger vehicles, fees according to the following classifications and schedules:

Private passenger vehicles of not more than nine passengers \$13.00
 Private passenger vehicles over nine passengers \$16.00

provided, that a fee of only one dollar (\$1.00) shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during war so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the introductory paragraph and in subdivision (5).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (5) are set out.

§ 20-87.1. Reciprocity; passenger buses operated by common carrier of passengers. — (a) Passenger buses operated by any common carrier of passengers for use in intrastate or interstate commerce shall be extended full reciprocity and exempted from registration fees only in such instances where such common carriers of passengers have validly licensed in the State of North Carolina the average number of buses required to operate the total miles operated by it in and through the State during the preceding year. The average number of buses required will be determined by applying the average miles traveled of each bus owned by it into the total miles operated in North Carolina by such carrier during the preceding year. The Division may, in its discretion, verify the average number of buses required by the common carrier of passengers during the licensing year in and through the State. Upon payment by the common carrier of passengers of the prescribed fees or taxes, the Division shall issue registration certificates and license plates for the average number of buses required by such common carrier of passengers. Thereafter, all buses properly identified and licensed in any state, territory, province, county or the District of Columbia, and used by such common carrier of passengers shall be permitted to operate on an interstate or intrastate basis.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

§ 20-88. Property-hauling vehicles.

(b) There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of self-propelled property-carrying vehicles, fees according to the following classification and schedule and upon the following conditions:

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight	
	<i>Farmer</i>
Not over 4,500 pounds	\$0.20
4,501 to 8,500 pounds inclusive	.25
8,501 to 12,500 pounds inclusive	.32
12,501 to 16,500 pounds inclusive	.44
Over 16,500 pounds	.50

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight	
	<i>Private Hauler</i>
	<i>Contract Carriers, Flat</i>
	<i>Rate Common Carriers and</i>
	<i>Exempt for-Hire Carriers</i>
Not over 4,500 pounds	\$0.40
4,501 to 8,500 pounds inclusive	.50
8,501 to 12,500 pounds inclusive	.63
12,501 to 16,500 pounds inclusive	.88
Over 16,500 pounds	1.00

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight

	<i>Common Carrier of Property (Deposit)</i>
Not over 4,500	\$0.75
4,501 to 8,750 pounds inclusive	.75
8,501 to 12,500 pounds inclusive	.75
12,501 to 16,500 pounds inclusive	.75
Over 16,500 pounds	.75

- (1) The minimum fee for a vehicle licensed under this subsection shall be twelve dollars and fifty cents (\$12.50) at the farmer rate and sixteen dollars (\$16.00) at the private hauler, contract carrier and common carrier rates.
- (2) The term "farmer" as used in this subsection means any person engaged in the raising and growing of farm products on a farm in North Carolina not less than 10 acres in area, and who does not engage in the business of buying products for resale.
- (3) License plates issued at the farmer rate shall be placed upon trucks and truck-tractors that are operated exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies and not operated in hauling for hire.
- (4) "Farm products" means any food crop, cattle, hogs, poultry, dairy products, flower bulbs, or other nursery products and other agricultural products designed to be used for food purposes, including in the term "farm products" also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products grown, produced, or processed by the farmer.
- (5) The Division shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" plates, when vehicle bearing such plates shall be sold or transferred.
- (6) There shall be paid to the Division annually as of the first of January, the following fees for "wreckers" as defined under G.S. 20-38(39): a wrecker fully equipped weighing 7,000 pounds or less, sixty-two dollars and fifty cents (\$62.50); wreckers weighing in excess of 7,000 pounds shall pay one hundred twenty-five dollars (\$125.00). Fees to be prorated quarterly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer's license plate to tow a vehicle for a customer.

(c) There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of trailers or semitrailers, four dollars (\$4.00) for any part of the license year for which said license is issued.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (b) and (c).

As the rest of the section was not changed by the amendment, only subsections (b) and (c) are set out.

§ 20-88.1. Driver Training and Safety Education Fund. — Beginning July 1, 1958, each and every passenger or property-carrying vehicle registering with the Division of Motor Vehicles, for which the registration tax is now being paid as provided in this Chapter, shall pay an annual registration tax of two dollars (\$2.00) in addition to all other amounts provided in this Chapter. The revenue derived from the additional tax of two dollars (\$2.00) shall be placed in a separate fund to finance a program of driver training and safety education at the public high schools of the State, and the amounts so collected shall be transferred periodically to the account of the State Board of Education. In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of the State for all persons of provisional license age. Such courses as shall be developed shall be made available to all physically and mentally qualified persons of provisional license age, including public school students, nonpublic school students and out-of-school youths under 18 years of age. In addition to the revenue derived from the annual additional registration tax of two dollars (\$2.00), the State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds which may become available for its use for said purpose. (1957, c. 682, s. 1; 1965, c. 410, s. 1; 1975, c. 431; c. 716, s. 5.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, substituted "as provided in this Chapter, shall pay an annual registration tax of two dollars (\$2.00) in addition to all other amounts provided in this Chapter" for "at the annual rate of ten dollars (\$10.00) or more, shall pay an additional annual registration tax of one dollar

(\$1.00)" at the end of the first sentence. The amendment also substituted "two dollars (\$2.00)" for "one dollar (\$1.00)" in the second and last sentences.

The second 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the first sentence.

§ 20-91. Records and reports required of franchise carriers. — (a) Every common carrier of passengers and common carrier of property shall keep a record of all business transacted and all revenue received on such forms as may be prescribed by or satisfactory to the Commissioner.

Any owner or lessee applying for proportional registration of vehicles shall maintain records of the total number of miles operated by such vehicles in all jurisdictions during the preceding year and the total number of miles operated in this State during the preceding year. As used in this section, "preceding year" shall mean a period of 12 consecutive months fixed by the Division, which is within 16 months immediately preceding the commencement of the registration or license year in which proportional registration is sought.

All records required by this section shall be preserved for a period of three years, and shall at all times during the business hours of the day be subject to inspection by the Commissioner or his deputies or such other agents as may be duly authorized by the Commissioner. Any owner or lessee failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court.

(b) All common carriers of passengers and common carriers of property shall, on or before the thirtieth day of each month, make a report to the Division of gross revenue earned and gross mileage operated during the month previous, in such manner as the Division may require and on such forms as the Division shall furnish. If reports are not filed by the thirtieth day of the month following the month for which the report is made, a penalty of five percent (5%) of gross receipts tax reported will be due. This five percent (5%) penalty must be paid in addition to the gross receipts tax and may not be claimed as a credit against

the tag deposit. Provided that the Commissioner may, in his discretion, waive the five percent (5%) penalty upon proof by the carrier that late filing of report was due to extenuating circumstances beyond the control of the carrier.

(c) It shall be the duty of the Commissioner, by competent auditors, to have the books and records of every common carrier of passengers and common carrier of property examined at least once each year to determine if such operators are keeping complete records as provided by this section of this Article, and to determine if correct reports have been made to the State Division of Motor Vehicles covering the total amount of tax liability of such operators.

(d) If any carrier of passengers or property shall fail, neglect, or refuse to keep such records or to make such reports or pay tax due as required, and within the time provided in this Article, the Commissioner shall immediately inform himself as best he may as to all matters and things required to be set forth in such records and reports, and from such information as he may be able to obtain, determine and fix the amount of the tax due the State from such delinquent operator for the period covering the delinquency, adding to the tax so determined and as a part thereof an amount equal to five percent (5%) of the tax, to be collected and paid. The said Commissioner shall proceed immediately to collect the tax including the additional five percent (5%). Any such carrier of passengers or property, having no records on the basis of which the Commissioner can determine the amount of the tax due by such carrier, shall be assessed on each vehicle at the rate applicable for contract carriers, and any bonds or deposits theretofore made shall be applied on such assessment and any further amount shall be collected as provided by law.

(e) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Commissioner of Motor Vehicles, any deputy, assistant, agent, clerk, other officer, employee, or former officer or employee, to divulge or make known in any manner the amount of gross revenue or tax paid by any common carrier of passengers or common carrier of property as set forth or disclosed in any report or return required in remitting said tax, or as otherwise disclosed. Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof; the inspection of such reports or returns by the Governor, Attorney General, Utilities Commission, or their or its duly authorized representatives; or the inspection by a legal representative of the State of the report or return of any common carrier of passengers or common carrier of property which shall bring an action to set aside or review the tax based thereon, or against which action or proceeding has been instituted to recover any tax or penalty imposed by this Article. Any person, officer, agent, clerk, employee, or former officer or employee violating the provisions of this section shall be guilty of a misdemeanor. Nothing in this subsection or in any other law shall prevent the exchange of information between the Division of Motor Vehicles and the Department of Revenue when such information is needed by either or both of said departments for the purposes of properly enforcing the laws with the administration of which either or both of said departments is charged. (1937, c. 407, s. 55; 1939, c. 275; 1941, c. 36; 1943, c. 726; 1945, c. 575, s. 3; 1947, c. 914, s. 2; 1951, c. 190, s. 1; c. 819, s. 1; 1955, c. 1313, s. 2; 1967, c. 1079, s. 2; 1975, c. 716, s. 5; c. 767, s. 3.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsections (b), (c) and (e). Pursuant to Session Laws 1975, c. 716, s. 5, "Division" has also been substituted for "Department" in subsection (a) as rewritten by the second 1975 amendment.

The second 1975 amendment rewrote subsection (a), substituted "carrier of

passengers or property" for "common carrier of passengers or common carrier of property" near the beginning of the first sentence in subsection (d) and substituted "carrier of passengers or property" for "common carrier of property or common carrier of passengers" near the beginning of the third sentence of that subsection.

§ 20-94. Partial payments. — In the purchase of licenses, where the gross amount of the license to any one owner amounts to more than four hundred dollars (\$400.00), half of such payment may, if the Commissioner is satisfied of the financial responsibility of such owner, be deferred until June 1 in any calendar year upon the execution to the Commissioner of a draft upon any bank or trust company upon forms to be provided by the Commissioner in an amount equivalent to one half of such tax, plus a carrying charge of one half of one percent ($\frac{1}{2}$ of 1%): Provided, that any person using any tag so purchased after the first day of June in any such year without having first provided for the payment of such draft, shall be guilty of a misdemeanor. No further license plates shall be issued to any person executing such a draft after the due date of any such draft so long as such draft or any portion thereof remains unpaid. Any such draft being dishonored and not paid shall be subject to the penalties prescribed in G.S. 20-178 and shall be immediately turned over by the Commissioner to his duly authorized agents and/or the State Highway Patrol, to the end that this provision may be enforced. When the owner of the vehicles for which a draft has been given sells or transfers ownership to all vehicles covered by the draft, such draft shall become payable immediately, and such vehicles shall not be transferred by the Division until the draft has been paid. Any one owner whose gross license amounts to more than two hundred dollars (\$200.00) but not more than four hundred dollars (\$400.00) may also be permitted to sign a draft in accordance with the foregoing provisions of this section provided such owner makes application for the draft on or before February 1 during the license renewal period. (1937, c. 407, s. 58; 1943, c. 726; 1945, c. 49, ss. 1, 2; 1947, c. 219, s. 10; 1953, c. 192; 1967, c. 712; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the next-to-the-last sentence.

§ 20-97. Taxes compensatory; no additional tax.

(c) In addition to the appropriation carried in the appropriations act there shall be appropriated to the Motor Vehicle Division the additional sum of fifteen thousand dollars (\$15,000) from the State highway fund: Provided, that such additional sum shall be made available only in the event that the regular appropriation is insufficient and it shall be determined by the Director of the Budget that such additional amount is necessary to carry out the provisions of this Article. (1937, c. 407, s. 61; 1941, c. 36; 1943, c. 639, ss. 3, 4; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (c).

As subsections (a) and (b) were not changed by the amendment, they are not set out.

Part 8. Anti-Theft and Enforcement Provisions.

§ 20-102. Report of stolen and recovered motor vehicles. — Every sheriff, chief of police, or peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall immediately report such theft to the Division. Any said officer upon receiving information that any vehicle, which he has previously reported as stolen, has been recovered, shall immediately report the fact of such recovery to the Division. (1937, c. 407, s. 66; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places.

§ 20-102.1. False report of theft or conversion a misdemeanor. — A person who knowingly makes to a peace officer or to the Division a false report of the theft or conversion of a motor vehicle shall be guilty of a misdemeanor, punishable within discretion of the court. (1963, c. 1083; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-103. Reports by owners of stolen and recovered vehicles. — The owner, or person having a lien or encumbrance upon a registered vehicle which has been stolen or embezzled, may notify the Division of such theft or embezzlement, but in the event of an embezzlement may make such report only after having procured the issuance of a warrant for the arrest of the person charged with such embezzlement. Every owner or other person who has given any such notice must notify the Division of the recovery of such vehicle. (1937, c. 407, s. 67; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places.

§ 20-104. Action by Division on report of stolen or embezzled vehicles. — (a) The Division, upon receiving a report of a stolen or embezzled vehicle as hereinbefore provided, shall file and appropriately index the same and shall immediately suspend the registration of the vehicle so reported, and shall not transfer the registration of the same until such time as it is notified in writing that such vehicle has been recovered.

(b) The Division shall at least once each month compile and maintain at its headquarters office a list of all vehicles which have been stolen or embezzled or recovered as reported to it during the preceding month, and such lists shall be open to inspection by any peace officer or other persons interested in any such vehicle. (1937, c. 407, s. 68; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-106. Receiving or transferring stolen vehicles.

The language "or has reason to believe has been stolen or unlawfully taken" does not create a matter of conjecture as to what is prohibited and is not unconstitutionally vague so as to deprive the defendant of due process of law. *State v. Rook*, 26 N.C. App. 33, 215 S.E.2d 159 (1975).

The purpose of this section is to discourage the possession of stolen vehicles by one who knows it is stolen or has reason to believe that it is stolen. *State v. Rook*, 26 N.C. App. 33, 215 S.E.2d 159 (1975).

§ 20-108. Vehicles without manufacturer's numbers. — Any person who knowingly buys, receives, disposes of, sells, offers for sale, conceals, or has in his possession any motor vehicle, or engine or transmission removed from a motor vehicle, from which the manufacturer's serial or engine number or other distinguishing number or identification mark or number placed thereon under assignment from the Division has been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of said motor vehicle or engine is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment, or both, in the discretion of the court. (1937, c. 407, s. 72; 1965, c. 621, s. 2; 1973, c. 1149, ss. 1, 2; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-109. Altering or changing engine or other numbers. — (a) It shall be unlawful and constitute a misdemeanor for:

- (1) Any person to willfully deface, destroy, remove, cover, or alter the manufacturer's serial number, transmission number, or engine number; or
- (2) Any vehicle owner to knowingly permit the defacing, removal, destroying, covering, or alteration of the serial number, transmission number, or engine number; or
- (3) Any person except a licensed vehicle manufacturer as authorized by law to place or stamp any serial number, transmission number, or engine number upon a vehicle, other than one assigned thereto by the Division; or
- (4) Any vehicle owner to knowingly permit the placing or stamping of any serial number or motor number upon a motor vehicle, except such numbers as assigned thereto by the Division.

A violation of this subsection shall be punishable by a fine or imprisonment not to exceed two years, or both, in the discretion of the court.

(b) It shall be unlawful and constitute a felony for:

- (1) Any person, with intent to conceal or misrepresent the true identity of the vehicle, to deface, destroy, remove, cover, alter, or use any serial or motor number assigned to a vehicle by the Division; or
- (2) Any vehicle owner, with intent to conceal or misrepresent the true identity of the vehicle, to permit the defacing, destruction, removal, covering, alteration, or use of a serial or motor number assigned to a vehicle by the Division; or
- (3) Any vehicle owner, with the intent to conceal or misrepresent the true identity of a vehicle, to permit the defacing, destruction, removal, covering, alteration, use, gift, or sale of any manufacturer's serial number, serial number plate, or any part or parts of a vehicle containing the serial number or portions of the serial number.

A violation of this subsection shall be punishable by a fine of not less than two thousand dollars (\$2,000) or imprisonment for not more than five years, or both, in the discretion of the court. (1937, c. 407, s. 73; 1943, c. 726; 1953, c. 216; 1965, c. 621, s. 3; 1967, c. 449; 1973, c. 1089; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-109.1. Surrender of titles to salvage vehicles. — (a) A vehicle shall be deemed to be a salvage vehicle:

- (1) When an insurance company as a result of having paid a total loss claim acquires title to a vehicle, and obtains possession or control of a vehicle, for any cause other than theft; or
- (2) When an insurance company has acquired title to and obtains possession of a vehicle in settlement of a theft loss claim, and upon recovery of the vehicle it is determined that the vehicle has been damaged to the extent that it would be considered a total loss under the provisions of comprehensive and collision insurance.

If the salvage vehicle was registered in North Carolina, or if the loss or damages occurred in North Carolina, or if the sale of the salvage vehicle takes place in North Carolina then the insurance company or their authorized agent shall within 10 days after payment of a total loss claim forward to the Division of Motor Vehicles the certificate of title or the comparable ownership document issued by the jurisdiction wherein the vehicle was last registered. The certificate of title or comparable ownership document shall be properly assigned to the insurance company by the vehicle owner. Subsequent transfers of ownership shall be on forms provided by the Division; and such forms shall be mailed by the Division to the insurance company at the address furnished in the assignment of title from the registered owner, unless otherwise requested in writing by the insurance company or their authorized agent. The insurance company shall make an assignment of ownership on the form and deliver it to the purchaser upon sale of the salvage vehicle. The forms shall be considered as proof of ownership for the purpose of G.S. 20-61. In the event the salvage vehicle is rebuilt, an application for reissuance of the title shall be made on a form prescribed by the Division, and the application shall be accompanied by such supporting information as the Division may require.

(b) Any person acquiring or having possession of any salvage vehicle, purchased in those states that do not require the surrender of titles to salvage vehicles shall within 10 days following delivery of the vehicle and title forward to the Division the certificate of title or comparable ownership document issued by the jurisdiction wherein the vehicle was last registered, with properly executed assignments and reassignments of such title or ownership document. Subsequent transfers of ownership and reissuance of the title shall be as provided for in subsection (a) hereof.

(c) Except when operated by or at the direction of the Commissioner or his designee, no person shall operate a salvage vehicle prior to compliance with Division requirements prerequisite to application for reissuance of a title. The rebuilt salvage vehicle may be operated following completion of the required examination and certification, provided the operation shall be in compliance with Chapter 20.

(d) A violation of any provision of this section shall constitute a misdemeanor punishable by a fine of not more than one hundred dollars (\$100.00) or imprisonment for not more than two years, or both, in the discretion of the court. (1973, c. 1095, s. 1; 1975, c. 716, s. 5; c. 799.)

Editor's Note. — Session Laws 1975, c. 799, in the second paragraph of subsection (a), inserted "or their authorized agent" and substituted "within 10 days after payment of a total loss claim" for "within three days after sale of salvage vehicle" in the first sentence, deleted "and the insurance company shall execute an assignment of title designating the purchaser" at the end of the second sentence, substituted "to the insurance company" for "to the purchaser" and "from the registered owner, unless otherwise requested in writing by the insurance company or their authorized agent" for "from the insurance company" in the third

sentence and added the fourth sentence. In subsection (b), c. 799 substituted "purchased in those states that do not require the surrender of titles to salvage vehicles shall within 10 days following delivery of the vehicle and title" for "regardless of the source and conditions of acquisition, shall immediately" near the beginning of the subsection. The amendment also rewrote subsection (c) and substituted "not more than" for "not less than" in subsection (d).

Pursuant to Session Laws 1975, c. 716, s. 5, "Division" has been substituted for "Department" throughout this section as amended by Session Laws 1975, c. 799.

§ 20-110. When registration shall be rescinded. — (a) The Division shall rescind and cancel the registration of any vehicle which the Division shall determine is unsafe or unfit to be operated or is not equipped as required by law.

(b) The Division shall rescind and cancel the registration of any vehicle whenever the person to whom the registration card or registration number plates therefor have been issued shall make or permit to be made any unlawful use of the said card or plates or permit the use thereof by a person not entitled thereto.

(c) The Division shall rescind and cancel the license of any dealer to whom such license has been issued when such dealer allows his registration number plates to be used for other than demonstration purposes except as provided by G.S. 20-79, fails to carry out the provisions of G.S. 20-79 and 20-82, or is convicted of a felony.

(d) The Division shall rescind and cancel the certificate of title to any vehicle which has been erroneously issued or fraudulently obtained or is unlawfully detained by anyone not entitled to possession.

(e) The Division shall rescind and cancel the license and dealer plates issued to any person when it is found that false or fraudulent statements have been made in the application for the same, and when and if it is found that the applicant does not have a bona fide place of business as provided by this Article.

(f) The Division shall rescind and cancel the dealer's license and dealer's license plates issued to any person who knowingly delivers a certificate of title to a vehicle purchased from him which does not show a proper or correct transfer of ownership or who willfully fails to deliver proper certificate of title to a motor vehicle sold by him.

(g) The Division shall rescind and cancel the registration plates issued to a common carrier of passengers or property which has been secured by such common carrier as provided under G.S. 20-50 when the license is being used on a vehicle other than the one for which it was issued or which is being used by the lessor-owner after the lease with such lessee has been terminated.

(h) The Division may rescind and cancel the registration or certificate of title on any vehicle on the grounds that the application therefor contains any false or fraudulent statement or that the holder of the certificate was not entitled to the issuance of a certificate of title or registration.

(i) The Division may rescind and cancel the registration or certificate of title of any vehicle when the Division has reasonable grounds to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of certificate of title constituted a fraud against the rightful owner or person having a valid lien upon such vehicle.

(j) The Division may rescind and cancel the registration or certificate of title of any vehicle on the grounds that the registration of the vehicle stands suspended or revoked under the motor vehicle laws of this State.

(k) The Division shall rescind and cancel a certificate of title when the Division finds that such certificate has been used in connection with the registration or sale of a vehicle other than the vehicle for which the certificate was issued. (1937, c. 407, s. 74; 1945, c. 576, s. 5; 1947, c. 220, s. 4; 1951, c. 985, s. 1; 1953, c. 831, s. 4; 1955, c. 294, s. 1; c. 554, s. 11; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-111. Violation of registration provisions. — It shall be unlawful for any person to commit any of the following acts:

(1) To operate or for the owner thereof knowingly to permit the operation upon a highway of any vehicle, trailer, or semitrailer required to be registered and which is not registered or for which a certificate of title has not been issued, or which does not have attached thereto and displayed thereon the registration number plate or plates assigned thereto by the Division for the current registration year, subject to the provisions of G.S. 20-64 and 20-72(a) and the exemptions mentioned in G.S. 20-65 and 20-79.

(4) To fail or refuse to surrender to the Division, upon demand, any title certificate, registration card or registration number plate which has been suspended, canceled or revoked as in this Article provided.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subdivisions (1) and (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (1) and (4) are set out.

Part 9. The Size, Weight, Construction and Equipment of Vehicles.

§ 20-116. Size of vehicles and loads.

(e) No combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 55 feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided, that wreckers in an emergency may tow a combination tractor and trailer to the nearest feasible point for repair and/or storage: Provided, that the Board of Transportation shall have authority to designate any highways upon the State system as light-traffic roads when, in the opinion of the Board of Transportation, such roads are inadequate to carry and will be injuriously affected by the maximum load, size, and/or width of trucks or buses using such roads as herein provided for, and all such roads so designated shall be conspicuously posted as light-traffic roads and the maximum load, size and/or width authorized shall be displayed on proper signs erected thereon. Provided, however, that a combination of a house trailer used as a mobile home, together

with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. The operation of any vehicle whose gross load, size and/or width exceed the maximum shown on such signs over the roads thus posted shall constitute a misdemeanor: Provided further, that no standard concrete highway, or other highway built of material of equivalent durability, and not less than 18 feet in width, shall be designated as a light-traffic road: Provided further, that the limitations placed on any road shall not be less than eighty percent (80%) of the standard weight, unless there shall be available an alternate improved route of not more than twenty percent (20%) increase in the distance; provided, however, that such restriction of limitations shall not apply to any county road, farm-to-market road, or any other road of the secondary system: Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than two saddle mounts are used and provided further that equipment used in said combination is approved by the safety regulations of the Interstate Commerce Commission and the safety regulations of the North Carolina Division of Motor Vehicles and the Board of Transportation.

(j) Self-propelled grain combines or other farm equipment self-propelled, pulled or otherwise, not exceeding 18 feet in width may be operated on any highway, except a highway or section of highway that is a part of the National System of Interstate and Defense Highways: Provided that all such combines or equipment which exceed 10 feet in width may be so operated only under the following conditions:

- (1) Said equipment may only be so operated during daylight hours; and
- (2) Said equipment must display a red flag on front and rear, said flags shall not be smaller than three feet wide and four feet long and be attached to a stick, pole, staff, etc., not less than four feet long and shall be so attached to said equipment as to be visible from both directions at all times while being operated on the public highway for not less than 300 feet; and
- (3) Equipment [covered] by this section, which by necessity must travel more than 10 miles or where by nature of the terrain or obstacles the flags referred to in subdivision (2) are not visible from both directions for 300 feet at any point along the proposed route, must be preceded at a distance of 300 feet and followed at a distance of 300 feet by a flagman in a vehicle having mounted thereon an appropriate warning light or flag.
- (4) Every such piece of equipment so operated shall operate to the right of the center line when meeting traffic coming from the opposite direction and at all other times when possible and practical.
- (5) Violation of this section shall not constitute negligence per se.
- (6) When said equipment is causing a delay in traffic, the operator of said equipment shall move the equipment off the paved portion of the highway at the nearest practical location until the vehicles following said equipment have passed.

(1975, c. 148, ss. 1-5; c. 716, s. 5.)

Editor's Note. —

The first 1975 amendment inserted "pulled" near the beginning of the introductory language of subsection (j), deleted near the middle of that language a proviso relating to special permits as provided in § 20-119, deleted "further" following "Provided" near the end of that language, deleted at the end of subdivision (2) of subsection (j) "and said equipment shall travel only on routes designated by the special permit required under this section and for distances not to exceed 10 miles" and rewrote subdivision (3) of subsection (j). Section 5 of the first 1975 amendatory act has been added by the editors as subdivision (6) of subsection (j).

The second 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the end of subsection (e).

The word "covered" following "Equipment" at the beginning of subdivision (3) of subsection (j) was omitted, apparently through inadvertence, in that subdivision as it appears in the first 1975 amendatory act, and has been inserted by the editors in brackets.

As the rest of the section was not changed by the amendments, only subsections (e) and (j) are set out.

§ 20-118. Weight of vehicles and load. — No vehicle or combination of vehicles shall be moved or operated on any highway or bridge when the gross weight thereof exceeds the limits specified below:

- (1) When the wheel is equipped with high-pressure pneumatic, solid rubber or cushion tire, 8,000 pounds.
- (2) When the wheel is equipped with low-pressure pneumatic tire, 9,000 pounds.
- (3) The gross weight on any one axle of the vehicle when the wheels attached to said axle are equipped with high-pressure solid rubber or cushion tires, 16,000 pounds.
- (4) The single axle weight when the wheels attached to said axle are equipped with low-pressure pneumatic tires, 19,000 pounds, provided that the maximum weight per axle when in tandem shall remain at 18,000 pounds.
- (5) For each violation of subdivisions (3) or (4), or for each violation of the maximum axle-weight limits established by the Board of Transportation in connection with light-traffic roads, the owner of the vehicle shall pay to the Division a penalty for each pound of weight of [on] such axle in excess of the said maximum weight in accordance with the following schedule: for the first 1,000 pounds or any part thereof, two cents (2¢) per pound; for the next 1,000 pounds or any part thereof, three cents (3¢) per pound; and for each additional pound, five cents (5¢) per pound. Provided, however, the penalty shall not apply if the excess weight on any one axle does not exceed 1,000 pounds. Said 1,000 pounds shall constitute a tolerance and no additional tolerance on axle weight shall be granted administratively or otherwise. In all cases of violation of the axle-weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted in subdivisions (3) and (4) including the 1,000-pound tolerance. The penalties herein provided shall constitute sole punishment for violation of this subdivision and violators thereof shall not be subject to criminal action. Provided, that a truck or other motor vehicle whose axle load exceeds that prescribed for light-traffic roads shall be exempt from such limitations when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and row crops when the destination of such vehicle and load is located solely upon said light-traffic road. Provided further that nothing herein contained shall be construed in order to raise the load limit heretofore or hereafter set by the Department of Transportation on any bridge. In the event of undue damage to any light-traffic road heretofore referred as a result of this action, such road or roads may then be restricted by the Division of Highways. Provided, that when

it is discovered that a vehicle is in violation of subdivisions (3) or (4), or is in violation of the maximum axle-weight limits established by the Board of Transportation in connection with light-traffic roads, the owner of the vehicle shall be permitted to shift without penalty the weight from one axle to another to comply with the axle limits set forth in this section in the following instances, provided, that the gross weight of the vehicle is within the legal limit:

- a. In cases where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.
 - b. In cases where the vehicle has tandem axles and the weight exceeds the statutory limits, but does not exceed 40,000 pounds for any two-axle combination or 60,000 pounds for any three-axle combination.
 - c. In cases where the axle weight does not exceed 15,500 pounds and the limit placed on the road or highway by the Board of Transportation is 13,000 pounds per axle.
- (6) Axle Weights. — For the purposes of this section, the following definitions shall apply:
- a. Single-axle weight. — The total load on all wheels whose centers are included within two parallel transverse planes less than 48 inches apart.
 - b. Tandem-axle weight. — The total load on all wheels whose centers are at least 48 inches apart but not more than 104 inches apart and are equipped with a connecting mechanism designed to equalize the load on all axles except that as to any vehicle equipped with tandem axles prior to July 1, 1969, the portion of this definition concerning a connecting mechanism designed to equalize the load on all axles shall not apply.
- (7) For the purposes of this section every pneumatic tire designed for use and used when inflated with air to less than 100 pounds pressure shall be deemed a low-pressure pneumatic tire, and every pneumatic tire inflated to 100 pounds pressure or more shall be deemed a high-pressure pneumatic tire.
- (8) The gross weight of any vehicle having two axles shall not exceed 30,000 pounds, unless used in connection with a combination consisting of four axles or more. For the purpose of determining the maximum weight to be allowed for passenger buses to be operated upon the highways of this State, the Commissioner of Motor Vehicles shall require, prior to the issuance of license, a certificate showing the weight of such bus when fully equipped for the road. No license shall be issued to any passenger bus with two axles having a weight, when fully equipped for operation on the highways, of more than 22,500 pounds, and no license shall be issued for any passenger bus with three axles having a weight, when fully equipped for operation on the highways, of more than 30,000 pounds, unless the bus for which application for license is made shall have been licensed in the State of North Carolina prior to the first day of February, 1949. No special permits shall be issued for any passenger buses exceeding the foregoing specified weights for each group.
- (9) The gross weight of any vehicle or combination of vehicles having three axles shall not exceed 47,500 pounds. For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes. For the purposes of this subdivision, brakes shall not be required on the front wheels; provided, however, such vehicle must be capable of complying with the performance requirements of G.S. 20-124(e).

- (10) The gross weight of any vehicle or combination of vehicles having four or more axles shall not exceed 64,000 pounds. For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes; provided, the gross weight of any vehicle or combination of vehicles having five or more axles shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

<i>Distance in feet between the extremes of any axles</i>	<i>Maximum weight in pounds on any 5-axle group</i>
35 or under	70,000
36	70,500
37	71,000
38	72,000
39	72,500
40	73,000
41	73,500
42	74,000
43	75,000
44	75,500
45	76,000

For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes: Provided a wrecker towing a disabled vehicle or vehicles of an emergency nature, only the weight of the vehicle or combination of vehicles being towed shall be considered. For the purposes of this subdivision, brakes shall not be required on the front wheels; provided, however, such vehicle must be capable of complying with the performance requirements of G.S. 20-124(e).

- (11) The gross weight with normal load of passengers of any vehicle propelled by electric power obtained from trolley wires, but not operated upon rails, commonly known as an electric trackless trolley coach, which is operated as a part of the general trackless trolley system of passenger transportation of the City of Greensboro and vicinity, shall not exceed 30,000 pounds.
- (12) No vehicle shall be operated on any highway the weight of which, resting on the surface of such highway, exceeds 600 pounds upon any inch of tire roller or other support.

Any vehicle or combination of vehicle and load may exceed the gross weight limitations for the vehicle or vehicle and load hereinbefore set out in this section by not more than five per centum (5%), except that under no circumstances shall the total weight, including tolerance, exceed 73,280 pounds on the National System of Interstate and Defense Highways unless changed by federal law.

For each violation of the gross weight limitation for the vehicle or vehicle and load the owner of the vehicle shall pay to the Division a penalty for each pound of weight of such vehicle or vehicle and load in excess of the weight limitations, including the five percent (5%), hereinbefore set out in this section for each vehicle or vehicle and load in accordance with the following schedule: for the first 2,000 pounds or any part thereof, one cent (1¢) per pound; for the next 3,000 pounds or any part thereof, two cents (2¢) per pound; for each pound in excess of 5,000 pounds, five cents (5¢) per pound.

Any vehicle or combination of vehicles operated on any highway on the State highway system shall also be subject to the safe load-carrying capacity for bridges as established and posted by the Board of Transportation pursuant to G.S. 136-72. (1937, c. 407, s. 82; 1943, c. 213, s. 2; cc. 726, 784; 1945, c. 242, s.

2; c. 569, s. 2; c. 576, s. 7; 1947, c. 1079; 1949, c. 1207, s. 2; 1951, c. 495, s. 2; c. 942, s. 1; c. 1013, ss. 5, 6, 8; 1953, cc. 214, 1092; 1959, c. 872; c. 1264, s. 6; 1963, c. 159; c. 610, ss. 3-5; c. 702, s. 5; 1965, cc. 483, 1044; 1969, c. 537; 1973, c. 507, s. 5; c. 1449, ss. 1, 2; 1975, c. 325; c. 373, s. 2; c. 716, s. 5; c. 735; c. 736, ss. 1-3.)

Editor's Note. —

The first 1975 amendment deleted, immediately following the table of distances and weights in subdivision (10), a proviso which read: "Provided the tandem-axle weight shall not exceed 35,700 pounds where the gross weight of any vehicle or combination of vehicles having five or more axles exceeds 73,000 pounds."

The second 1975 amendment added the last paragraph of the section.

The third 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subdivision (5) and in the next-to-last paragraph of the section.

The fourth 1975 amendment substituted present subdivision (4) for a provision which read: "When the wheels attached to said axle are equipped with low-pressure pneumatic tires, 18,000 pounds."

The fifth 1975 amendment added the sixth, seventh and eighth sentences in subdivision (5).

The penalties provided in subdivisions (5) and (12) are mandatory. Opinion of Attorney General to Mr. J.F. Alexander, 44 N.C.A.G. 307 (1975).

§ 20-123. Trailers and towed vehicles. — (a) No motor vehicle shall be driven upon any highway drawing or having attached thereto more than one trailer or semitrailer: Provided that this provision shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers: Provided that this provision shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than two saddle mounts are used and provided further that equipment used in said combination is approved by the safety regulations of the Interstate Commerce Commission and the safety regulations of the North Carolina Division of Motor Vehicles and the Board of Transportation. Nothing herein shall prohibit the towing of farm trailers and equipment in single tandem during the period from one-half hour before sunrise and one-half hour after sunset, but such combination of vehicles shall not exceed a total length of 40 feet and provided there is displayed on the rear of the last vehicle being towed, in such position as to be clearly visible at all times, a red flag not less than 12 inches both in length and width. The towing of farm trailers and equipment as herein permitted shall not be applicable to interstate or federal numbered highways.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

§ 20-125. Horns and warning devices.

(b) Every vehicle owned and operated by a police department or by the State Highway Patrol or by the Wildlife Resources Commission and used exclusively for law-enforcement purposes, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, and every ambulance used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by inspectors in the employ of the North Carolina Utilities Commission shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law-enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law-enforcement officer while actively engaged in performing law-enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization.

(1975, c. 588; c. 734, s. 15.)

Editor's Note. — Session Laws 1975, c. 588, substituted "assistant chiefs" for "one assistant chief" near the beginning of the third paragraph of subsection (b).

Session Laws 1975, c. 734, s. 15, directed that subsection (b) of this section be amended by substituting "civil preparedness" for "civil

defense" in the third sentence of the sixth paragraph. The intention was evidently to amend the third line of the sixth paragraph, which consists of a single sentence, and the editors have so treated the amendment.

As the rest of the section was not changed by the amendments, only subsection (b) is set out.

§ 20-125.1. Directional signals.

(b) It shall be unlawful for any dealer to sell or deliver in this State any motor vehicle of a changed model or series designation indicating that it was manufactured or assembled after July 1, 1953, if he knows or has reasonable cause to believe that the purchaser of such vehicle intends to register it or cause it to be registered in this State or to resell it to any other person for registration in and use upon the highways of this State, unless such motor vehicle is equipped with a mechanical or electrical signal device by which the operator of the vehicle may indicate to the operator of another vehicle, approaching from either of the front or rear or within a distance of 200 feet, his intention to turn from a direct line. Such signal device must be of a type approved by the Commissioner of Motor Vehicles: Provided that in the case of any motor vehicle manufactured or assembled after July 1, 1953, the signal device with which such motor vehicle is equipped shall be presumed prima facie to have been approved by the Commissioner of Motor Vehicles. Irrespective of the date of manufacture of any motor vehicle a certificate from the Commissioner of Motor Vehicles to the

effect that a particular type of signal device has been approved by his Division shall be admissible in evidence in all the courts of this State.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the end of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

§ 20-129.2. Lighting equipment for mobile homes. — Notwithstanding the provisions of G.S. 20-129 and 20-129.1, the lighting equipment required to be provided and equipped on a house trailer, mobile home, modular home, or structural component thereof shall be as designated by the Commissioner of Motor Vehicles and from time to time promulgated by regulation of the Division. (1975, c. 716, s. 5; c. 833, s. 1.)

Editor's Note. — Pursuant to Session Laws 1975, c. 716, s. 5, "Division" has been substituted for "Department" at the end of the section as enacted by Session Laws 1975, c. 833, s. 1.

Session Laws 1975, c. 833, s. 2, makes the act effective July 1, 1975.

§ 20-135. Safety glass.

(c) The Division of Motor Vehicles shall approve and maintain a list of the approved types of glass, conforming to the specifications and requirements for safety glass as set forth in this Article, and in accordance with standards recognized by the United States Bureau of Standards, and shall not issue a license for or relicense any motor vehicle subject to the provisions of this Article unless such motor vehicle be equipped as herein provided with such approved type of glass.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 20-135.4. Certain automobile safety standards.

(b), (c) Repealed by Session Laws 1975, c. 856.

(1975, c. 856.)

Editor's Note. —

The 1975 amendment repealed subsections (b) and (c), which related to manufacturers' warranties on energy-absorption systems.

As the other subsections were not changed by the amendment, they are not set out.

Part 9A. Abandoned and Derelict Motor Vehicles.

§ 20-137.7. Definitions of words and phrases. — The following words and phrases when used in this Part shall for the purpose of this Part have the meaning respectively prescribed to them in this Part, except in those instances where the context clearly indicates a different meaning:

(4) "Derelict vehicle" means a motor vehicle:

- a. Whose certificate of registration has expired and the registered and legal owner no longer resides at the address listed on the last certificate of registration on record with the North Carolina Department of Transportation; or

- b. Whose major parts have been removed so as to render the vehicle inoperable and incapable of passing inspection as required under existing standards; or
- c. Whose manufacturer's serial plates, vehicle identification numbers, license number plates and any other means of identification have been removed so as to nullify efforts to locate or identify the registered and legal owner; or
- d. Whose registered and legal owner of record disclaims ownership or releases his rights thereto; or
- e. Which is more than 12 years old and does not bear a current license as required by the Department.

(1975, c. 19, s. 6.)

Editor's Note. — The 1975 amendment corrected an error in the 1973 act by adding "Whose" at the beginning of paragraph c of subdivision (4).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (4) are set out.

§ 20-137.10. Abandoned and derelict vehicles to be tagged; determination of value.

(b) Repealed by Session Laws 1975, c. 438, s. 3.

(c) The tag shall serve as the only notice that if the vehicle is not removed within five days from the date reflected on the tag, it will be removed to a designated place to be sold. After the vehicle is removed, the Secretary shall give notice in writing to the person in whose name the vehicle was last registered at the last address reflected in the Department's records and to any lienholder of record that the vehicle is being held, designating the place where the vehicle is being held and that if it is not redeemed within 10 days from the date of the notice by paying all costs of removal and storage the same shall be sold for recycling purposes. The proceeds of the sale shall be deposited in the highway fund established for the purpose of administering the provisions of this Part.

(d1) If the value of the vehicle is determined to be less than one hundred dollars (\$100.00), and if the identity of the last registered owner cannot be determined or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identification and addresses of any lienholders, no notice in addition to that required by subsection (a) hereof shall be required prior to sale.

(1975, c. 438, s. 3.)

Editor's Note. — The 1975 amendment deleted subsection (b), relating to vehicles valued at less than \$100.00, substituted "The tag" for "If the value of the vehicle is determined to be more than one hundred dollars (\$100.00) the tag shall so state and" at the

beginning of subsection (c), deleted "legal" preceding "notice" in the first sentence of subsection (c), and added subsection (d1).

As subsections (a), (d) and (e) were not changed by the amendment, they are not set out.

Part 10. Operation of Vehicles and Rules of the Road.

§ 20-138. Persons under the influence of intoxicating liquor.

Violation of Subsection (a) Is Negligence, etc. —

An intentional, willful, or wanton violation of a statute or ordinance, designed for the protection of human life or limb, which proximately results in injury or death, is culpable negligence. *State v. Griffith*, 24 N.C.

App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

Death caused by a violation of subsection (a), etc. —

Death caused by a violation of either this section or § 20-140(b) may constitute manslaughter. *State v. Griffith*, 24 N.C. App.

250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

A precedent to a conviction of manslaughter for the violation of either this section or § 20-140(b) or both is that the violation of either one or both must have caused the accident and the death of decedent. *State v. Griffith*, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

Sufficiency of Warrant. —

A warrant charging defendant with driving

under the influence and reckless driving, which were treated as separate counts, was sufficient since each count charged all the essential elements constituting the violation of law charged. *State v. Fuller*, 24 N.C. App. 38, 209 S.E.2d 805 (1974).

Cited in *In re Sparks*, 25 N.C. App. 65, 212 S.E.2d 220 (1975).

§ 20-139. Persons under the influence of drugs.

Cited in *In re Sparks*, 25 N.C. App. 65, 211 S.E.2d 220 (1975).

§ 20-139.1. Result of a chemical analysis admissible in evidence; presumption.

(b) Chemical analyses of the person's breath or blood, to be considered valid under the provisions of this section, shall have been performed according to methods approved by the Commission for Health Services and by an individual possessing a valid permit issued by the Department of Human Resources for this purpose. The Department of Human Resources is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and the Department of Human Resources may issue permits which shall be subject to termination or revocation at the discretion of the Department of Human Resources; provided, that in no case shall the arresting officer or officers administer said test.

(1975, c. 405.)

Editor's Note. —

The 1975 amendment substituted "Department of Human Resources" for "Commission for Health Services" near the end of the first sentence and immediately preceding the proviso to the second sentence in subsection (b).

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

"Arresting Officer". —

Where defendant was already under arrest and was seated in the patrol car of the arresting officer when the officer who eventually administered the test first arrived on the scene,

and where the latter officer had not been called to the scene for any purpose of assisting in the arrest and he in no way did assist in the arrest, but arrived at the scene merely because it happened to be on his direct route to the police station, and he stopped there solely to assist in moving the defendant's car out of the way of traffic, and despite the fact that the latter officer testified on cross-examination by defendant's counsel that if trouble had developed with the defendant he would have assisted the arresting officer with that too, these facts did not make him an arresting officer. *State v. Dail*, 25 N.C. App. 552, 214 S.E.2d 219 (1975).

Applied in *State v. Fuller*, 24 N.C. App. 38, 209 S.E.2d 805 (1974).

§ 20-140. Reckless driving.

Death caused by a violation of either subsection (b) of this section or § 20-138 may constitute manslaughter. *State v. Griffith*, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

A precedent to a conviction of manslaughter for the violation of either subsection (b) of this

section or § 20-138 or both is that the violation of either one or both must have caused the accident and the death of decedent. *State v. Griffith*, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

The language of this section defines, etc. —
An intentional, willful, or wanton violation of

a statute or ordinance, designed for the protection of human life or limb, which proximately results in injury or death, is culpable negligence. *State v. Griffith*, 24 N.C. App. 250, 210 S.E.2d 431 (1974), cert. denied, 286 N.C. 546, 212 S.E.2d 168 (1975).

Warrants Held Sufficient. —

A warrant charging defendant with driving

under the influence and reckless driving, which were treated as separate counts, was sufficient since each count charged all the essential elements constituting the violation of law charged. *State v. Fuller*, 24 N.C. App. 38, 209 S.E.2d 805 (1974).

§ 20-141. Speed restrictions.

(k) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, the maximum speed limit on any public highway within the State of North Carolina shall not exceed 55 miles per hour.

(l) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, including municipal charters, any speed limit on any portion of the public highways within the jurisdiction of this State shall be uniformly applicable to all types of motor vehicles using such portion of the highway, if on November 1, 1973, such portion of the highway had a speed limit which was uniformly applicable to all types of motor vehicles using it. Provided, however, that a lower speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of such vehicle, including any load thereon. The requirement for a uniform speed limit hereunder shall not apply to any portion of the highway during such time as the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on such portion of the highway. (1937, c. 297, s. 2; c. 407, s. 103; 1939, c. 275; 1941, c. 347; 1947, c. 1067, s. 17; 1949, c. 947, s. 1; 1953, c. 1145; 1955, c. 398; c. 555, ss. 1, 2; c. 1042; 1957, c. 65, s. 11; c. 214; 1959, c. 640; c. 1264, s. 10; 1961, cc. 99, 1147; 1963, cc. 134, 456, 949; 1967, c. 106; 1971, c. 79, ss. 1-3; 1973, c. 507, s. 5; c. 1330, s. 7; 1975, c. 225.)

Local Modification. — Burke: 1975, c. 533; Richmond: 1975, c. 17.

Cross Reference. — As to minimum speed on inside lanes of certain dual-lane highways, see § 20-146, subsection (e).

Editor's Note. —

The 1975 amendment added subsections (k) and (l).

As the rest of the section was not changed by the amendment, only subsections (k) and (l) are set out.

Applied in *State v. Crabtree*, 286 N.C. 541, 211 S.E.2d 214 (1975).

Cited in *Caldwell v. Deese*, 26 N.C. App. 435, 216 S.E.2d 452 (1975).

§ 20-141.3. Unlawful racing on streets and highways.

(d) The Commissioner of Motor Vehicles shall revoke the operator's or chauffeur's license or privilege to drive of every person convicted of violating the provisions of subsection (a) or subsection (c) of this section, said revocation to be for three years; provided any person whose license has been revoked under this section may apply for a new license after 18 months from revocation. Upon filing of such application the Division may issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past 18 months and that his conduct and attitude are such as to entitle him to favorable consideration and upon such terms and conditions which the Division may see fit to impose for the balance of the three-year revocation period, which period shall be computed from the date of the original revocation.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

§ 20-144. Special speed limitation on bridges. — It shall be unlawful to drive any vehicle upon any public bridge, causeway or viaduct at a speed which is greater than the maximum speed which can with safety to such structure be maintained thereon, when such structure is signposted as provided in this section.

The Board of Transportation, upon request from any local authorities, shall, or upon its own initiative may, conduct an investigation of any public bridge, causeway or viaduct, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this Article, the Division shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of 100 feet beyond each end of such structure. The findings and determination of the Board of Transportation shall be conclusive evidence of the maximum speed which can with safety to any such structure be maintained thereon. (1937, c. 407, s. 106; 1957, c. 65, s. 11; 1973, c. 507, ss. 5, 21; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975,

substituted "Division" for "Department" in the second paragraph.

§ 20-146. Drive on right side of highway; exceptions.

(e) Notwithstanding any other provisions of this section, when appropriate signs have been posted, it shall be unlawful for any person to operate a motor vehicle over and upon the inside lane, next to the median of any dual-lane highway at a speed less than the posted speed limit when the operation of said motor vehicle over and upon said inside lane shall impede the steady flow of traffic except when preparing for a left turn. "Appropriate signs" as used herein shall be construed as including "Slower Traffic Keep Right" or designations of similar import. Any person violating the provisions of this section shall be guilty of a misdemeanor punishable as provided in G.S. 20-176. (1937, c. 407, s. 108; 1965, c. 678, s. 2; 1973, c. 1330, s. 13; 1975, c. 593.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, added subsection (e).

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

§ 20-146.1. Operation of motorcycles. — (a) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.

(b) Motorcycles shall not be operated more than two abreast in a single lane. (1965, c. 909; 1973, c. 1330, s. 14; 1975, c. 786.)

Editor's Note. —

The 1975 amendment rewrote this section.

§ 20-150. Limitations on privilege of overtaking and passing.

Applied in *Watson Seafood & Poultry Co. v. George W. Thomas, Inc.*, 26 N.C. App. 6, 214 S.E.2d 605 (1975).

§ 20-154. Signals on starting, stopping or turning.

(b) The signal herein required shall be given by means of the hand and arm in the manner herein specified, or by any mechanical or electrical signal device approved by the Division, except that when a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, the signal shall be given by a device of a type which has been approved by the Division.

Whenever the signal is given the driver shall indicate his intention to start, stop, or turn by extending the hand and arm from and beyond the left side of the vehicle as hereinafter set forth.

Left turn — hand and arm horizontal, forefinger pointing.

Right turn — hand and arm pointed upward.

Stop — hand and arm pointed downward.

All hand and arm signals shall be given from the left side of the vehicle and all signals shall be maintained or given continuously for the last 100 feet traveled prior to stopping or making a turn. Provided, that in all areas where the speed limit is 45 miles per hour or higher and the operator intends to turn from a direct line of travel, a signal of intention to turn from a direct line of travel shall be given continuously during the last 200 feet traveled before turning; and provided further that the violation of this section shall not constitute negligence per se.

Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, a signal lamp or lamps or mechanical signal device when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles except combinations operated by farmers in hauling farm products.

(c) No person shall operate over the highways of this State a right-hand-drive motor vehicle or a motor vehicle equipped with the steering mechanism on the right-hand side thereof unless said motor vehicle is equipped with mechanical or electrical signal devices by which the signals for left turns and right turns may be given. Such mechanical or electrical devices shall be approved by the Division.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the first paragraph of subsection (b) and in subsection (c).

As the rest of the section was not changed by the amendment, only subsections (b) and (c) are set out.

§ 20-156. Exceptions to the right-of-way rule.

Instructions to Jury. — There is no error prejudicial to defendant in the occasional use of the term "servient highway or street" instead of

"private road or drive" in the charge to the jury. *Penland v. Greene*, 24 N.C. App. 240, 210 S.E.2d 505 (1974).

§ 20-158. Vehicle control signs and signals.**(b) Control of Vehicles at Intersections. —**

- (1) When a stop sign has been erected or installed at an intersection, it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main-traveled or through highway. When stop signs have been erected at three or more entrances to an intersection the driver, after stopping in obedience thereto, may proceed with caution.
- (2) When a stoplight has been erected or installed at an intersection and is emitting a steady red light, vehicles facing the red light shall come to a complete stop. When the stoplight is emitting a steady yellow light, vehicles facing the yellow light shall be warned that a red light will be immediately forthcoming and that vehicles may not enter the intersection on such a red light; provided, that except where prohibited by appropriate sign, vehicular traffic facing a steady red light may enter an intersection to make a right turn after coming to a complete stop and yielding the right-of-way to pedestrians and to other traffic using the intersection. When the stoplight is emitting a steady green light, vehicles may proceed through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law.
- (3) When a flashing red light has been erected or installed at an intersection, approaching vehicles facing the red light shall stop and yield the right-of-way to vehicles in or approaching the intersection. The right to proceed shall be subject to the rules applicable to making a stop at a stop sign.
- (4) When a flashing yellow light has been erected or installed at an intersection, approaching vehicles facing the yellow flashing light may proceed through the intersection with caution, yielding the right-of-way to vehicles in or approaching the intersection.
- (5) When a stop sign, stoplight, flashing light, or other traffic-control device authorized by subsection (a) requires a vehicle to stop at an intersection, the driver shall stop at an appropriately marked stop line, or if none, before entering a marked crosswalk, or if none, before entering the intersection at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street.

(1975, c. 1.)

Editor's Note. —

The 1975 amendment added the proviso at the end of the second sentence of subdivision (b)(2).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

This section regulates the conduct of one entering the main highway from a private road.
Penland v. Greene, 24 N.C. App. 240, 210 S.E.2d 505 (1974).

§ 20-166. Duty to stop in event of accident or collision; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.

(b) The driver of any vehicle involved in an accident or collision resulting in damage to property and in which there is not involved injury or death of any person shall immediately stop his vehicle at the scene of the accident or collision and shall give his name, address, operator's or chauffeur's license number and the registration number of his vehicle to the driver or occupants of any other vehicle involved in the accident or collision or to any person whose property is damaged in the accident or collision; provided that if the damaged property is a parked and unattended vehicle and the name and location of the owner is not known to or readily ascertainable by the driver of the responsible vehicle, the

said driver shall furnish the information required by this subsection to the nearest available peace officer, or, in the alternative, and provided he thereafter within 48 hours fully complies with G.S. 20-166.1(c), shall immediately place a paper-writing containing said information in a conspicuous place upon or in the damaged vehicle and, provided that if the damaged property is a guard rail, utility pole, or other fixed object owned by the Board of Transportation, a public utility, or other public service corporation to which report cannot readily be made at the scene, it shall be sufficient if the responsible driver shall furnish the information required to the nearest peace officer or make written report thereof containing said information by U.S. certified mail, return receipt requested, to the N.C. Division of Motor Vehicles within five days following said collision. Any person violating the provisions of this subsection shall be guilty of a misdemeanor and fined or imprisoned for a period of not more than two years, or both, in the discretion of the court.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

Driver Must Stop at Scene, etc. —

The driver violates this section if he does not immediately stop at the scene. *State v. Norris*, 26 N.C. App. 259, 215 S.E.2d 875 (1975).

The proviso in subsection (b) merely withdraws the case of a parked or unattended vehicle whose owner's identity is not readily ascertainable from the general language of the statute. It does not describe a separate offense, and therefore it need not be negated in the warrant. *State v. Norris*, 26 N.C. App. 259, 215 S.E.2d 875 (1975).

Applied in *State v. Rimmer*, 25 N.C. App. 637, 214 S.E.2d 225 (1975).

§ 20-166.1. Reports and investigations required in event of collision. — (a) The driver of a vehicle involved in a collision resulting in injury to or death of any person or total property damage to an apparent extent of two hundred dollars (\$200.00) or more shall immediately, by the quickest means of communication, give notice of the collision to the local police department if the collision occurs within a municipality, or to the office of the sheriff or other qualified rural police of the county wherein the collision occurred.

(b) The driver of any vehicle involved in a collision resulting in injury to or death of any person or total property damage to an apparent extent of two hundred dollars (\$200.00) or more shall furnish proof of financial responsibility on forms prescribed by the Division.

(c) Notwithstanding any other provisions of this section, the driver of any motor vehicle which collides with another motor vehicle left parked or unattended on any street or highway of this State shall within 48 hours report the collision to the owner of such parked or unattended motor vehicle. Such report shall include the time, date and place of the collision, the driver's name, address, operator's or chauffeur's license number and the registration number of the vehicle being operated by the driver at the time of the collision, and such report may be oral or in writing. Such written report must be transmitted to the current address of the owner of the parked or unattended vehicle by United States certified mail, return receipt requested, and a copy of such report shall be transmitted to the North Carolina Division of Motor Vehicles.

No report, oral or written, made pursuant to this Article shall be competent in any civil action except to establish identity of the person operating the moving vehicle at the time of the collision referred to therein.

Any person who violates this subsection is guilty of a misdemeanor and shall be punishable by fine or imprisonment, or both, in the discretion of the court.

(d) The Division may require the driver of a vehicle involved in a collision which is required to be reported by this section to file a supplemental report when the original report is insufficient in the opinion of the Division.

(e) It shall be the duty of the State Highway Patrol or the sheriff's office or other qualified rural police to investigate all collisions required to be reported by this section when the collisions occur outside the corporate limits of a city or town; and it shall be the duty of the police department of each city or town to investigate all collisions required to be reported by this section when the collisions occur within the corporate limits of the city or town. Every law-enforcement officer who investigates a collision as required by this subsection, whether the investigation is made at the scene of the collision or by subsequent investigations and interviews, shall, within 24 hours after completing the investigation, forward a written report of the collision to the Division if the collision occurred outside the corporate limits of a city or town, or to the police department of the city or town if the collision occurred within the corporate limits of such city or town. Police departments should forward such reports to the Division within 10 days of the date of the collision. Provided, when a collision occurring outside the corporate limits of a city or town is investigated by a duly qualified law-enforcement officer other than a member of the State Highway Patrol, as permitted by this section, such other officer shall forward a written report of the collision to the office of the sheriff or rural police of the county wherein the collision occurred and the office of the sheriff or rural police shall forward such reports to the Division within 10 days of the date of the collision. The reports by law-enforcement officers shall be in addition to, and not in place of, the reports required of drivers by this section.

When any person involved in an automobile collision shall die as a result of said collision within a period of 12 months following said collision, and such death shall not have been reported in the original report, it shall be the duty of investigating enforcement officers to file a supplemental report setting forth the death of such person.

(f) Every person holding the office of medical examiner in this State shall report to the Division the death of any person as a result of a collision involving a motor vehicle and the circumstances of the collision within five days following such death. Every hospital shall notify the medical examiner of the county in which the collision occurred of the death within the hospital of any person who dies as a result of injuries apparently sustained in a collision involving a motor vehicle.

(g) With respect to a collision between a common carrier and another vehicle, which collision is required to be reported by this section, the common carrier shall make a written report of the collision to the Division within 10 days from the date of the collision, and the report shall be in addition to the report required of the driver. When the original report submitted by a common carrier is insufficient in the opinion of the Division, the Division may require it to file a supplemental report.

(h) The Division shall prepare and shall upon request supply to police, [medical examiners], sheriffs, and other suitable agencies, or individuals, forms for collision reports calling for sufficiently detailed information to disclose with reference to a highway collision the cause, conditions then existing, and the persons and vehicles involved. All collision reports required by this section shall be made on forms supplied or approved by the Division.

(i) All collision reports, including supplemental reports, above mentioned, except those made by State, city or county police, shall be without prejudice and shall be for the use of the Division and shall not be used in any manner as evidence, or for any other purpose in any trial, civil or criminal, arising out of such collision except that the Division shall furnish upon demand of any court a properly executed certificate stating that a particular collision report has or has not been filed with the Division solely to prove a compliance with this section.

The reports made by State, city or county police and medical examiners, but no other reports required under this section, shall be subject to the inspection

of members of the general public at all reasonable times, and the Division shall furnish a certified copy of any such report to any member of the general public who shall request the same, upon receipt of a fee of two dollars fifty cents (\$2.50) [for a] certified copy, or the Division is authorized to furnish without charge to departments of the governments of the United States, states, counties, and cities certified copies of such collision reports for official use.

Nothing herein provided shall prohibit the Division from furnishing to interested parties only the name or names of insurers and insured and policy number shown upon any reports required under this section.

(j) The Division shall receive collision reports required to be made by this section and may tabulate and analyze such reports and publish annually, or at more frequent intervals, statistical information based thereon as to the number, cause and location of highway collisions.

Based upon its findings after analysis, the Division may conduct further necessary detailed research to determine more fully the cause and control of highway collisions. It may further conduct experimental field tests within areas of the State from time to time to prove the practicability of various ideas advanced in traffic control and collision prevention. (1953, c. 1340, s. 2; 1955, c. 913, s. 9; 1963, c. 1249; 1965, c. 577; 1971, c. 55; c. 763, s. 1; c. 958, ss. 2, 3; 1973, c. 1133, ss. 1, 2; c. 1330, s. 29; 1975, c. 307; c. 716, s. 5.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, eliminated provisions as to uncertified copies of reports in the second paragraph of subsection (i), increased the fee for certified copies in the first sentence of that paragraph from \$1.00 to \$2.50, and deleted the former last sentence of that paragraph, relating to disposition of funds received under the provisions of subsection (i). The amendment also

eliminated the brackets around "medical examiners" near the beginning of the first sentence of the second paragraph of subsection (i), which had been used in the Replacement Volume because of a technical error in the 1973 amendatory act.

The second 1975 amendment, effective July 1, 1975, substituted "Division" for "Department," throughout the section.

Part 11. Pedestrians' Rights and Duties.

§ 20-174. Crossing at other than crosswalks; walking along highway.

The failure of a pedestrian, etc. —

Failure to yield the right-of-way as required under subsection (a) is not negligence per se, but it does constitute evidence of negligence. *Brooks v. Boucher*, 22 N.C. App. 676, 207 S.E.2d 282, cert. denied, 286 N.C. 211, 209 S.E.2d 319 (1974).

A pedestrian who crosses the street at a point where he does not have the right-of-way must

constantly watch for on-coming traffic before he steps into the street and while he is crossing. If he sees a vehicle approaching him, he must move out of its path. A pedestrian who fails to take these precautions cannot be said to exercise reasonable care for his own safety. *Brooks v. Boucher*, 22 N.C. App. 676, 207 S.E.2d 282, cert. denied, 286 N.C. 211, 209 S.E.2d 319 (1974).

§ 20-174.1. Standing, sitting or lying upon highways or streets prohibited.

The legislative intent, etc. —

In accord with 2nd paragraph in original. See *State v. Frinks*, 22 N.C. App. 584, 207 S.E.2d 380, cert. granted, 285 N.C. 761, 209 S.E.2d 285 (1974).

Conduct Constituting Violation, etc. —

In accord with 1st paragraph in original. See *State v. Frinks*, 22 N.C. App. 584, 207 S.E.2d 380, cert. granted, 285 N.C. 761, 209 S.E.2d 285 (1974).

Instructions. — Trial court's charge to the jury when it read the warrant, which charged defendants with "feloniously" sitting, in defining the violation of this section was not prejudicial when the charge was considered in its entirety. *State v. Frinks*, 22 N.C. App. 584, 207 S.E.2d 380, cert. granted, 285 N.C. 761, 209 S.E.2d 285 (1974).

Part 12. Sentencing; Penalties.

§ 20-176. Penalty for misdemeanor.

(b) Unless another penalty is in this Article or by the laws of this State provided, every person convicted of a misdemeanor for the violation of any provision of this Article shall be punished by a fine of not more than one hundred dollars (\$100.00) or by imprisonment in the county or municipal jail for not more than 60 days, or by both such fine and imprisonment. (1937, c. 407, s. 137; 1951, c. 1013, s. 7; 1957, c. 1255; 1967, c. 674, s. 3; 1969, c. 378, s. 3; 1973, c. 1330, s. 34; 1975, c. 644.)

Editor's Note. —

The 1975 amendment deleted in subsection (b) a proviso which set a lesser punishment for certain violations.

As subsection (a) was not changed by the amendment, it is not set out.

§ 20-178. Penalty for bad check. — When any person, firm, or corporation shall tender to the Division any uncertified check for payment of any tax, fee or other obligation due by him under the provisions of this Article, and the bank upon which such check shall be drawn shall refuse to pay it on account of insufficient funds of the drawer on deposit in such bank, and such check shall be returned to the Division, an additional tax shall be imposed by the Division upon such person, firm or corporation, which additional tax shall be equal to ten percent (10%) of the tax or fee in payment of which such check was tendered: Provided, that in no case shall the additional tax be less than one dollar (\$1.00); provided, further, that no additional tax shall be imposed if, at the time such check was presented for payment, the drawer had on deposit in any bank of this State funds sufficient to pay such check and by inadvertence failed to draw the check upon such bank, or upon the proper account therein. The additional tax imposed by this section shall not be waived or diminished by the Division. (1937, c. 407, s. 139; 1953, c. 1144; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

§ 20-179. Penalty for driving or operating vehicle while under the influence of intoxicating liquor, narcotic drugs, or other impairing drugs; limited driving permits for first offenders.

(b) (1) Upon a first conviction only, the trial judge may when feasible allow a limited driving privilege or license to the person convicted for proper purposes reasonably connected with the health, education and welfare of the person convicted and his family. For purposes of determining whether conviction is a first conviction, no prior offense occurring more than 10 years before the date of the current offense shall be considered. The judge may impose upon such limited driving privilege any restrictions as in his discretion are deemed advisable including, but not limited to, conditions of days, hours, types of vehicles, routes, geographical boundaries and specific purposes for which limited driving privilege is allowed. Any such limited driving privilege allowed and restrictions imposed thereon shall be specifically recorded in a written judgment which shall be as near as practical to that hereinafter set forth and shall be signed by the trial judge and shall be affixed with the seal of the court and shall be made a part of the records of the said court. A copy of said judgment shall be transmitted to the Division of Motor Vehicles along with any operator's or chauffeur's license in the

possession of the person convicted and a notice of the conviction. Such permit issued hereunder shall be valid for such length of time as shall be set forth in the judgment of the trial judge. Such permit shall constitute a valid license to operate motor vehicles upon the streets and highways of this or any other state in accordance with the restrictions noted thereon and shall be subject to all provisions of law relating to operator's or chauffeur's license not by their nature rendered inapplicable.

- (2) The judgment issued by the trial judge as herein permitted shall as near as practical be in form and contents as follows:

STATE OF NORTH CAROLINA }
COUNTY OF }

IN THE GENERAL COURT
OF JUSTICE
RESTRICTED DRIVING
PRIVILEGES

This cause coming on to be heard and being heard before the Honorable, Judge presiding, and it appearing to the Court that the defendant, ..., has been convicted of the offense of (describe offense under G.S. 20-138, 20-139(a) or 20-139(b) or as appropriate), and it further appearing to the court that the defendant should be issued a restrictive driving license and is entitled to the issuance of a restrictive driving privilege under and by the authority of G.S. 20-179(b);

Now, therefore, it is ordered, adjudged and decreed that the defendant be allowed to operate a motor vehicle under the following conditions and under no other circumstances.

Name:

Race: Sex:

Height: Weight:

Color of Hair: Color of Eyes:

Birth Date:

Driver's License Number:

Signature of Licensee:

Conditions of Restriction:

Type of Vehicle:

Geographic Restrictions:

Hours of Restriction:

Other Restrictions:

This limited license shall be effective from to
.... subject to further orders as the court in its discretion may deem necessary and proper.

This the day of, 19....

.....
(Judge Presiding)

- (3) Upon conviction of such offense outside the jurisdiction of this State the person so convicted may apply to the resident judge of the superior court of the district in which he resides for limited driving privileges hereinbefore defined. Upon such application the judge shall have the authority to issue such limited driving privileges in the same manner as if he were the trial judge.
- (4) Any violation of the restrictive driving privileges as set forth in the judgment of the trial judge allowing such privileges shall constitute the offense of driving while license has been revoked as set forth in G.S. 20-28. Whenever a person is charged with operating a motor vehicle in violation of the restrictions, the limited driving privilege shall be suspended pending the final disposition of the charge.

- (5) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina. (1937, c. 407, s. 140; 1947, c. 1067, s. 18; 1967, c. 510; 1969, c. 50; c. 1283, ss. 1-5; 1971, c. 619, s. 16; c. 1133, s. 1; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subdivision (b)(1).

As subsection (a) was not changed by the amendment, it is not set out.

Out-of-State Convictions. — If it is the clear intent of the legislature to count out-of-state convictions in permanently depriving one of his license under § 20-19(e), it is logical to conclude that the legislature intended them to count for purposes of granting limited driving privileges under subdivision (b)(1) of this section. In re Sparks, 25 N.C. App. 65, 211 S.E.2d 220 (1975).

It is reasonable to assume that the legislative amendment in 1971 adding "or as appropriate" to the offenses to be listed in the form judgment of subdivision (b)(2) was referring to out-of-state convictions. In re Sparks, 25 N.C. App. 65, 211 S.E.2d 220 (1975).

In view of the legislative recognition of out-of-state convictions in other subdivisions of subsection (b), and the fundamental rule of construction that sections and acts in pari materia, and all parts thereof, should be construed together on out-of-state conviction within 10 years of the present offense abrogates the discretion of a judge to grant a limited permit. In re Sparks, 25 N.C. App. 65, 211 S.E.2d 220 (1975).

Subdivision (b)(1) is a license reinstatement provision, and insofar as the court has already held that the clear legislative intent under a penal provision was to count prior out-of-state convictions, it becomes very difficult to discount them under a grace type provision. In re Sparks, 25 N.C. App. 65, 211 S.E.2d 220 (1975).

Under § 20-24(c), a bond forfeiture is equivalent to a conviction. In re Sparks, 25 N.C. App. 65, 211 S.E.2d 220 (1975).

§ 20-183. Duties and powers of law-enforcement officers; warning by local officers before stopping another vehicle on highway; warning tickets.

(b) In addition to other duties and powers heretofore existing, all law-enforcement officers charged with the duty of enforcing the motor vehicle laws are authorized to issue warning tickets to motorists for conduct constituting a potential hazard to the motoring public which does not amount to a definite, clear-cut, substantial violation of the motor vehicle laws. Each warning ticket issued shall be prenumbered and shall contain information necessary to identify the offender, and shall be signed by the issuing officer. A copy of each warning ticket issued shall be delivered to such offender and a copy thereof forwarded by the issuing officer forthwith to the Driver License Section of the Division of Motor Vehicles but shall not be filed with or in any manner become a part of the offender's driving record. Warning tickets issued as well as the fact of issuance shall be privileged information and available only to authorized personnel of the Division for statistical and analytical purposes. (1937, c. 407, s. 143; 1961, c. 793; 1965, cc. 537, 999; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Driver License Section of the Division of Motor Vehicles" for "Driver License Division of the Department of Motor Vehicles" and "Division" for "Department" in subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

Authority Granted Law-Enforcement Officers, etc. —

Although when a police officer first stopped and approached the truck he had no probable

cause to believe that defendant had committed any offense, nevertheless, the officer had authority to stop the truck under this section and the existence of probable cause at the time the truck was stopped was not essential to the validity of the subsequent arrest. State v. Dark, 22 N.C. App. 566, 207 S.E.2d 290, cert. denied, 285 N.C. 760, 209 S.E.2d 284 (1974).

Applied in State v. Keziah, 24 N.C. App. 298, 210 S.E.2d 436 (1974).

ARTICLE 3A.

Motor Vehicle Law of 1947.

Part 2. Equipment Inspection of Motor Vehicles.

§ 20-183.2. Equipment inspection required; inspection certificate; one-way permit to move vehicle to inspection station.

(b) Every inspection certificate issued under this Part shall be valid for not less than 12 months and shall expire at midnight on the last day of the month designated on said inspection certificate. It shall be unlawful to operate any motor vehicle on the highway until there is displayed thereon a current inspection certificate as provided by this Part, indicating that the vehicle has been inspected within the previous 12 months and has been found to comply with the standard for safety equipment prescribed by this Chapter subject to the following provisions:

- (1) Vehicles of a type required to be inspected under subsection (a), which are owned by a resident of this State, that have been outside of North Carolina continuously for a period of 30 days, or more, immediately preceding the expiration of the then current inspection certificate shall within 10 days of reentry to the State be inspected and have an approved certificate attached thereto if vehicle is to continue operation on the streets and highways.
- (2) Any vehicle owned or possessed by a dealer, manufacturer or transporter within this State and operated over the public streets and highways displaying thereon a dealer demonstration, manufacturer or transporter plate must have affixed to the windshield thereof a valid certificate of inspection and approval, except a dealer, manufacturer or transporter or his agent may operate a motor vehicle displaying dealer demonstration, manufacturer or transporter plates from source of purchase to his place of business or to an inspection station, provided it is within 10 days of purchase, foreclosure or repossession. Provided further, that a new car dealer may operate a new motor vehicle prior to first sale for customer demonstration purposes only without affixing thereto an inspection certificate as required by this section if such dealer causes an inspection of the equipment enumerated in G.S. 20-183.3 to be made and affixes on the window of the vehicle adjacent to the manufacturer's price list a certificate as near as practical in form and content as follows:

Dealer	
Dealer license number	
Vehicle make. Year model	
Vehicle identification number	
<i>Equipment Item</i>	<i>Check square when inspected and approved</i>
Brakes	☐
Lights	☐
Horn	☐
Steering Mechanism	☐
Windshield Wiper	☐
Directional Signals	☐
Tires	☐
Rear View Mirror	☐
Exhaust System	☐

I certify that the above items of equipment have been inspected and found to be in good working order.

.....
Dealer or Agent

- (3) Vehicles acquired by residents of this State from dealers or owners located outside of the State must, upon entry to this State, be inspected and approved, certificate attached, within 10 days after the vehicle becomes subject to registration.
- (4) Vehicles acquired by residents within this State, not displaying current North Carolina inspection certificates, must be inspected and have approved inspection certificate attached within 10 days from date registration plate issued or if registration plate is to be transferred, within 10 days of the date of purchase.
- (5) Owners of motor vehicles moving their residence to North Carolina from other states must within 10 days from the date the vehicles are subject to registration have same inspected and have an approved certificate attached thereto.
- (6) The Commissioner of Motor Vehicles or his duly authorized agent is empowered to grant special written one-way permits to operate motor vehicles without current inspection certificates solely for the purpose of moving such vehicles to an authorized inspection station to obtain the inspection required under this Part.

(c) On and after February 16, 1966, all motor vehicle dealers in North Carolina shall, prior to retail sale of any new or used motor vehicle, have such motor vehicle inspected by an approved inspection station as required by this Part. Provided, however, a purchaser of a motor vehicle, who is licensed as a self-inspector, may conduct the required inspection, after entering into a written agreement with the dealer to follow such a procedure. A copy of such dealer-purchaser agreement must be filed with the Division of Motor Vehicles. Provided further, that any new and unregistered vehicle sold to a nonresident (as defined in G.S. 20-6) shall be exempt from the requirements of this section if such vehicle is not required to be registered in this State.

(1975, c. 683; c. 716, s. 5.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, added to subdivision (2) of subsection (b) the proviso relating to operation of a new motor vehicle by a dealer without an inspection certificate.

The second 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (c).

As the rest of the section was not changed by the amendments, only subsections (b) and (c) are set out.

§ 20-183.4. Licensing of safety equipment inspection stations. — Every person, firm or agency with employees meeting the following qualifications shall, upon application, be issued a license designating the person, firm or agency as a safety equipment inspection station:

- (1) Be of good character and have a good reputation for honesty.
- (2) Have adequate knowledge of the equipment requirements of the motor vehicle laws of North Carolina.
- (3) Be able to satisfactorily conduct the mechanical inspection required by this Part.
- (4) Have adequate facilities as to space and equipment in order to check each of the items of safety equipment listed herein.
- (5) Have a general knowledge of motor vehicles sufficient to recognize a mechanical condition which is not safe.

Any person, firm or agency meeting the above requirements and desiring to be licensed as a motor vehicle inspection station may apply to the Commissioner of Motor Vehicles on forms provided by the Commissioner. The Commissioner shall cause an investigation to be made as to the applicant's qualifications, and if, in the opinion of the Commissioner, the applicant fulfills such qualifications, he shall issue a certificate of appointment to such person, firm or agency as a

safety equipment inspection station. Such appointment shall be issued without charge and shall be effective until canceled by request of licensee or until revoked or suspended by the Commissioner. Any licensee whose license has been revoked or suspended or any applicant whose application has been refused may, within 10 days from the notice of such revocation, suspension or refusal, request a hearing before the Commissioner and, in such cases, the hearing shall be conducted within 10 days of receipt of request for such hearing. The Commissioner, following such hearing, may rescind the order of suspension, revocation or the refusal to issue license, or he may affirm the previous order of revocation, suspension or refusal. Any applicant or licensee aggrieved by the decision of the Commissioner may, following such decision, file a petition in the Superior Court of Wake County or in the county wherein applicant or licensee resides. Such petition shall recite the fact that the administrative remedy, as provided above, has been exhausted. Provided, that no restraining order shall issue against the Division of Motor Vehicles under this section until and unless the Division shall have had at least five days' notice of the petitioner's intention to seek such restraining order.

The Commissioner may designate the State or any political subdivision thereof or any person, firm or corporation as self-inspectors for the sole purpose of inspecting vehicles owned or operated by such agencies, persons, firms, or corporations so designated. (1965, c. 734, s. 1; 1967, c. 692, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the second paragraph.

§ 20-183.6. Commissioner of Motor Vehicles to establish procedures; unlawful possession, etc., of certificates. — (a) The Commissioner of Motor Vehicles shall establish procedures for the control, distribution, sale, refund, and display of certificates and for the accounting for proceeds of their sale, consistent with this Article. It shall be unlawful knowingly to possess, affix, transfer, remove, imitate or reproduce an inspection certificate, except by direction of the Commissioner of Motor Vehicles under the terms of this Article.

(b) Notwithstanding any other provision of this Article, those who replace windshields in motor vehicles shall place on the replacement windshield an inspection certificate having the same expiration date as the certificate attached to the windshield removed and shall retain the certificate attached to the windshield removed until 30 days after the expiration thereof. In addition to the authority granted in subsection (a), the Commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this section. (1965, c. 734, s. 1; 1975, c. 109.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, designated the former provisions of the section as subsection (a) and added subsection (b).

§ 20-183.7. Fees to be charged by safety equipment inspection station. — Every inspection station, except self-inspectors as designated herein, shall charge a fee of three dollars ten cents (\$3.10) for inspecting a motor vehicle to determine compliance with this Article and shall give the operator a receipt indicating the articles and equipment approved and disapproved; provided, that inspection stations approved by the Commissioner, and operated under rules, regulations and supervision of any governmental agency, when inspecting vehicles required to be inspected by such agencies' rules and regulations and by the provisions of this Part, may, upon approval by such inspection station

and the payment of a fee of thirty-five cents (35¢), attach to the vehicle inspected a North Carolina inspection certificate as required by this Part. When the receipt is presented to the inspection station which issued it, at any time within 90 days, that inspection station shall reinspect the motor vehicle free of additional charge until approved. When said vehicle is approved, and upon payment to the inspection station of the fee, the inspection station shall affix a valid inspection certificate to said motor vehicle, and said inspection station shall maintain a record of the motor vehicles inspected which shall be available for 18 months. The Division of Motor Vehicles shall receive thirty-five cents (35¢) for each inspection certificate and these proceeds shall be placed in a fund designated the "Motor Vehicle Safety Equipment Inspection Fund," to be used under the direction and supervision of the Director of the Budget for the administration of this Article. (1965, c. 734, s. 1; 1969, c. 1242; 1973, c. 1480; 1975, c. 547; c. 716, s. 5.)

Editor's Note. —

The first 1975 amendment, effective Jan. 1, 1976, substituted "three dollars ten cents (\$3.10)" for "three dollars (\$3.00)" near the beginning of the first sentence, and "thirty-five cents (35¢)" for "twenty-five cents (25¢)" near

the end of the first sentence and near the beginning of the last sentence.

The second 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the last sentence.

§ 20-183.8. Commissioner of Motor Vehicles to issue regulations subject to approval of Governor; penalties for violation; fictitious or unlawful safety inspection certificate; 30-day grace period for expired inspection certificates.

(d) No person shall display or cause to be displayed or permit to be displayed upon any motor vehicle any safety inspection certificate, knowing the same to be fictitious or to be issued for another motor vehicle or to be issued without inspection and approval having been made. The Division is hereby authorized to take immediate possession of any safety inspection certificate which is fictitious or which has been otherwise unlawfully or erroneously issued or which has been unlawfully used. Any person violating the provisions of this subsection shall be guilty of a misdemeanor punishable by fine not to exceed fifty dollars (\$50.00) or imprisonment not to exceed 30 days.

(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (d).

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

ARTICLE 3B.

Permanent Weighing Stations and Portable Scales.

§ 20-183.10. Operation by Division of Motor Vehicles; uniformed personnel with powers of peace officers. — The permanent weighing stations to be established pursuant to the provisions of this Article shall be operated by the Division of Motor Vehicles, and the personnel assigned to the various stations shall wear uniforms to be selected and furnished by the Division of Motor Vehicles. The uniformed officers assigned to the various permanent weighing stations shall have the powers of peace officers in making arrests, serving process, and appearing in court in all matters and things relating to the weight of vehicles and their loads.

There is hereby appropriated to the Division of Motor Vehicles out of the State Highway and Public Works Fund the sum of two hundred fifty thousand dollars (\$250,000) for each year of the biennium ending June 30, 1953. The funds

appropriated in this paragraph shall be expended exclusively for the operation of the permanent weighing stations established pursuant to this Article. (1951, c. 988, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-183.11. Refusal of operator to cooperate in weighing vehicle; removal of excess portion of load. — When a permanent weighing station is established under the provisions of this section, it shall constitute a misdemeanor for the operator of any vehicle to refuse to permit his vehicle to be weighed at such station or to refuse to drive his vehicle upon the scales so that the same may be weighed. Any vehicle and its load found to be above the weight authorized in Chapter 20 of the General Statutes shall have immediately removed by the operator such portion of its load as may be necessary to decrease the gross weight of the vehicle to the maximum therefor specified in Chapter 20 of the General Statutes: Provided, that the Division may allow any vehicle transporting refrigerated or iced perishable foods for human consumption to proceed without removing all or a portion of its load when the owner or operator has paid the taxes and penalties due because of the overload or has made satisfactory arrangements with the Commissioner of Motor Vehicles to pay said taxes and penalties. The material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of the owner or operator of such vehicle. (1951, c. 988, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the proviso to the second sentence.

§ 20-183.12. Portable scales. — In addition to the appropriation contained in G.S. 20-183.9, there is hereby appropriated to the Division of Motor Vehicles out of the State Highway and Public Works Fund the sum of sixty-five thousand dollars (\$65,000) for each year of the biennium ending June 30, 1953. The money appropriated in this section shall be used by the Commissioner of Motor Vehicles for the purchase and use of portable scales for weighing vehicles traveling over the streets and highways of this State. (1951, c. 988, s. 4; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the first sentence.

ARTICLE 3C.

Vehicle Equipment Safety Compact.

§ 20-183.14. Legislative findings. — The General Assembly finds that:

- (3) The Division of Motor Vehicles, acting upon recommendations of the Vehicle Equipment Safety Commission and pursuant to the Vehicle Equipment Safety Compact provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this Article. (1963, c. 1167, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subdivision (3).

As subdivisions (1) and (2) were not changed by the amendment, they are not set out.

§ 20-183.16. Compact Commissioner. — The Commissioner of this State on the Vehicle Equipment Safety Commission shall be the Secretary of Transportation or such other officer of the Department of Transportation as the Secretary may designate. (1963, c. 1167, s. 4; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Secretary of Transportation or such other officer of the Department of Transportation as the Secretary

may designate" for "Commissioner of Motor Vehicles or such other officer of the Department as the Commissioner may designate."

ARTICLE 4.

State Highway Patrol.

§ 20-184. Patrol under supervision of Division of Motor Vehicles. — The Commissioner of Motor Vehicles, under the direction of the Governor, shall have supervision, direction and control of the State Highway Patrol. The Commissioner shall establish in the Division of Motor Vehicles a Division of Highway Safety and Patrol, prescribe regulations governing said Division, and assign to the Division such duties as he may deem proper. (1935, c. 324, s. 2; 1939, c. 387, s. 1; 1941, c. 36; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the second sentence.

§ 20-185. Personnel; appointment; salaries. — (a) The State Highway Patrol shall consist of a commanding officer, whose rank shall be designated by the Governor, and such additional subordinate officers and men as the Commissioner of Motor Vehicles, with the approval of the Governor and Advisory Budget Commission, shall direct. Members of the State Highway Patrol shall be appointed by the Commissioner, with the approval of the Governor, and shall serve at the pleasure of the Governor and Commissioner. The commanding officer, other officers and members of the State Highway Patrol shall be paid such salaries as may be established by the Division of Personnel of the Budget Bureau. Notwithstanding any other provision of this Article, the number of supervisory personnel of the State Highway Patrol shall not exceed a number equal to eighteen percent (18%) of the personnel actually serving as uniformed highway patrolmen. Nothing in the previous sentence is intended to require the demotion, reassignment or change in status of any member of the State Highway Patrol presently assigned in a supervisory capacity. If a reduction in the number of Highway Patrol personnel assigned in supervisory capacity is required in order for the State Highway Patrol to meet the mandatory maximum percentage of supervisory personnel as set out in the fourth sentence of this subsection, that reduction shall be achieved through normal attrition resulting from supervisory personnel resigning, retiring or voluntarily transferring from supervisory positions.

(f) The benefits provided for members of the State Highway Patrol under the provisions of subsections (b), (c), (d), and (e) of this section shall be granted to the Director and assistant director of the License and Theft Enforcement Section of the Division and to members of the License and Theft Enforcement Section designated by the Commissioner as "inspectors," in the same manner and under the same circumstances and subject to the same limitations as if the Director and assistant director and the inspectors were members of the State Highway Patrol. The benefits provided for members of the State Highway Patrol under the provisions of subsections (b), (c), (d), and (e) of this section shall be granted

to incapacitated driver license examiners, if such total or partial incapacity is the result of an injury by accident arising out of and in the course of giving a road test.

(1975, c. 61, ss. 1, 2; c. 716, s. 5.)

Editor's Note.—

The first 1975 amendment, effective July 1, 1975, added the last three sentences of subsection (a).

The second 1975 amendment, effective July 1, 1975, substituted "License and Theft Enforcement Section of the Division" for "License and Theft Enforcement Division of the Department" in the first sentence of subsection (f). The editors have also substituted "License

and Theft Enforcement Section" for "License and Theft Enforcement Division" in the first sentence of subsection (f).

As the rest of the section was not changed by the amendments, only subsections (a) and (f) are set out.

All of the functions, property, records, etc., of the Budget Bureau have been transferred by § 143-344 to the Department of Administration.

§ 20-187.2. Badges and service revolvers of deceased or retiring members of State, city and county law-enforcement agencies; revolvers of active members. — (a) Widows, or in the event such members die unsurvived by a widow, surviving children, of members of North Carolina State, city and county law-enforcement agencies killed in the line of duty or who are members of such agencies at the time of their deaths, and retiring members of such agencies, shall receive, upon request and at no cost to them, the badge and service revolver worn or carried by such deceased or retiring member, upon securing a permit as required by G.S. 14-402 et seq. or G.S. 14-409.1 et seq., or without such permit provided the revolver shall have been rendered incapable of being fired.

(1975, c. 44.)

Editor's Note. —

The 1975 amendment inserted "city and county" between "State" and "law-enforcement agencies" near the beginning of subsection (a).

Similar language in subsection (b) was not changed.

As subsection (b) was not changed by the amendment, it is not set out.

§ 20-188. Duties of Highway Patrol. — The State Highway Patrol shall be subject to such orders, rules and regulations as may be adopted by the Commissioner of Motor Vehicles, with the approval of the Governor, and shall regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State. To this end, the members of the Patrol are given the power and authority of peace officers for the service of any warrant or other process issuing from any of the courts of the State having criminal jurisdiction, and are likewise authorized to arrest without warrant any person who, in the presence of said officers, is engaged in the violation of any of the laws of the State regulating travel and the use of vehicles upon the highways, or of laws with respect to the protection of the highways, and they shall have jurisdiction anywhere within the State, irrespective of county lines.

The State Highway Patrol shall have full power and authority to perform such additional duties as peace officers as may from time to time be directed by the Governor, and such officers may at any time and without special authority, either upon their own motion or at the request of any sheriff or local police authority, arrest persons accused of highway robbery, bank robbery, murder, or other crimes of violence.

The State Highway Patrol shall be required to perform such other and additional duties as may be required of it by the Commissioner of Motor Vehicles

in connection with the work of the Division of Motor Vehicles, and such other and additional duties as may be required of it from time to time by the Governor.

Members of the State Highway Patrol, in addition to the duties, power and authority hereinbefore given, shall have the authority throughout the State of North Carolina of any police officer in respect to making arrests for any crimes committed in their presence and shall have authority to make arrests for any crime committed on any highway.

Regardless of territorial jurisdiction, any member of the State Highway Patrol who initiates an investigation of an accident or collision may not relinquish responsibility for completing the investigation, or for filing criminal charges as appropriate, without clear assurance that another law-enforcement officer or agency has fully undertaken responsibility, and in such cases he shall render reasonable assistance to the succeeding officer or agency if requested. (1929, c. 218, s. 4; 1933, c. 214, ss. 1, 2; 1935, c. 324, s. 3; 1939, c. 387, s. 2; 1941, c. 36; 1945, c. 1048; 1947, c. 1067, s. 20; 1973, c. 689; 1975, c. 716, s. 5.)

Editor's Note.—

The 1975 amendment, effective July 1, 1975,

substituted "Division" for "Department" in the third paragraph.

§ 20-190. Uniforms; motor vehicles and arms; expense incurred; color of vehicle. — The Division of Motor Vehicles shall adopt some distinguishing uniform for the members of said State Highway Patrol, and furnish each member of the Patrol with an adequate number of said uniforms and each member of said Patrol force when on duty shall be dressed in said uniform. The Division of Motor Vehicles shall likewise furnish each member of the Patrol with a suitable motor vehicle, and necessary arms, and provide for all reasonable expense incurred by said Patrol while on duty, provided, that not less than seventy-nine percent (79%) of the number of motor vehicles operated on the highways of the State by members of the State Highway Patrol shall be painted a uniform color of black and silver. (1929, c. 218, s. 5; 1941, c. 36; 1955, c. 1132, ss. 1, 1¼, 1¾; 1957, c. 478, s. 1; c. 673, s. 1; 1961, c. 342; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places.

§ 20-191. Establishment of district headquarters. — The Division of Motor Vehicles shall supply at its various district offices, or at some other point within the district if it shall be deemed advisable, suitable district headquarters, and the necessary clerical assistance for the commanding officer of the force at his headquarters in Raleigh and at the several district headquarters. (1929, c. 218, s. 6; 1937, c. 313, s. 1; 1941, c. 36; 1947, c. 461, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the beginning of the section.

§ 20-192. Shifting of patrolmen from one district to another. — The commanding officer of the State Highway Patrol under such rules and regulations as the Division of Motor Vehicles may prescribe shall have authority from time to time to shift the forces from one district to another, or to consolidate more than one district force at any point for special purposes. Whenever a member of the State Highway Patrol is transferred from one point to another for the convenience of the State or otherwise than upon the request of the patrolman, the Division shall be responsible for transporting the household goods, furniture and personal apparel of the patrolman and members of his household. (1929, c. 218, s. 7; 1937, c. 313, s. 1; 1941, c. 36; 1947, c. 461, s. 3; 1951, c. 285; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places.

§ 20-194. Expense of administration; defense of members and other State law-enforcement officers in civil actions; payment of judgments.

(c) The coverage afforded under this Article shall be excess coverage over any commercial liability insurance up to the limit of the Tort Claims Act. (1929, c. 218, s. 9; 1941, c. 36; 1957, c. 65, s. 11; 1973, c. 507, s. 5; c. 1323; 1975, c. 210.)

Editor's Note. —
The 1975 amendment added subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

§ 20-196. Statewide radio system authorized; use of telephone lines in emergencies. — The Commissioner of Motor Vehicles, through the Division of Highway Safety and Patrol is hereby authorized and directed to set up and maintain a statewide radio system, with adequate broadcasting stations so situate as to make the service available to all parts of the State for the purpose of maintaining radio contact with the members of the State Highway Patrol and other officers of the State, to the end that the traffic laws upon the highways may be more adequately enforced and that the criminal use of the highways may be prevented.

If the Director of the Budget shall find that the appropriation provided for the Division is not adequate to take care of the entire cost of the radio service herein provided for, after providing for the administration of other provisions of this law, the Board of Transportation, upon the order of the Director of the Budget approved by the Advisory Budget Commission, shall make available such additional sum as the said Budget Commission may find to be necessary to make the installation and operation of such radio service possible; and the sum so provided by the Board of Transportation shall constitute a valid charge against the appropriation item of betterments for State and county roads.

The Commissioner of Motor Vehicles is likewise authorized and empowered to arrange with the various telephone companies of the State for the use of their lines for emergency calls by the members of the State Highway Patrol, if it shall be found practicable to arrange apparatus for temporary contact with said telephone circuits along the highways of the State.

In order to make this service more generally useful, the various boards of county commissioners and the governing boards of the various cities and towns are hereby authorized and empowered to provide radio receiving sets in the offices and vehicles of their various officers, and such expenditures are declared to be a legal expenditure of any funds that may be available for police protection. (1935, c. 324, s. 6; 1941, c. 36; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the second paragraph.

§ 20-196.3. Who may hold supervisory positions over uniformed personnel. — Notwithstanding any other provision of the General Statutes of North Carolina, it shall be unlawful for any person other than the Governor and the Secretary of the Department of Transportation and other than a uniformed member of the North Carolina State Highway Patrol who has met all requirements for employment within the Patrol, including but not limited to completion of the basic Patrol school, to hold any supervisory position over uniformed personnel within the Patrol. (1975, c. 47.)

ARTICLE 6A.***Motor Carriers of Migratory Farm Workers.***

§ 20-215.2. Power to regulate; rules and regulations establishing minimum standards. — Notwithstanding any other provisions of this Chapter the North Carolina Division of Motor Vehicles, hereinafter referred to as "Division," is hereby vested with the power and duty to make and enforce reasonable rules and regulations applicable to motor carriers of migratory farm workers to and from their places of employment. The rules promulgated shall establish minimum standards:

- (1) For the construction and equipment of such vehicles, including coupling devices, lighting equipment, exhaust systems, rear vision mirrors, brakes, steering mechanisms, tires, windshield wipers and warning devices.
- (2) For the operation of such vehicles, including driving rules, distribution of passengers and load, maximum hours of service for drivers, minimum requirements of age and skill of drivers, physical conditions of drivers and permits, licenses or other credentials required of drivers.
- (3) For the safety and comfort of passengers in such vehicles, including emergency kits, fire extinguishers, first-aid equipment, sidewalls, seating accommodations, tail gates or doors, rest and meal stops, maximum number of passengers, and safe means of ingress and egress. (1961, c. 505, s. 2; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, "Department" in two places in the introductory paragraph.

§ 20-215.3. Adoption of I.C.C. regulations; public hearings on rules and regulations; distribution of copies. — The Division may adopt and enforce rules and regulations promulgated by the Interstate Commerce Commission, insofar as the Division finds such rules to be practicable in this State; shall conduct public hearings in connection with the formulation and adoption of rules and regulations; and shall cause the distribution of copies of such rules as are promulgated to interested persons and groups. (1961, c. 505, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places.

§ 20-215.4. Violation of regulations a misdemeanor. — The violation of any rule or regulation promulgated by the Division hereunder by any person, firm or corporation shall be a misdemeanor, punishable by a fine of not more than fifty dollars (\$50.00) or by imprisonment for a period of not more than 30 days, or by both such fine and imprisonment. (1961, c. 505, s. 4; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the beginning of the section.

ARTICLE 7.

Miscellaneous Provisions Relating to Motor Vehicles.

§ 20-219. Refund to counties of costs of prosecuting theft cases. — Whenever the Motor Vehicle Division of the State has caused to be instituted criminal prosecutions in the superior court of any county of the State for violation of the automobile theft laws, and the county wherein such case was tried has incurred court costs incident thereto, upon certificate of the clerk of the superior court of said county showing an itemized statement thereof, and that the same has been paid, upon the approval of the Commissioner of Motor Vehicles and the Attorney General, the sum or sums so paid shall be refunded to said county, the same to be paid from the highway maintenance fund from receipts from the motor vehicle registration title fees.

This section shall apply to costs incurred in the prosecution of automobile theft cases only. (1929, c. 275; 1941, c. 36; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the beginning of the first paragraph.

§ 20-219.2. Removal of unauthorized vehicles from private lots.

(c) This section shall apply only to the Counties of Craven, Forsyth, Gaston, Guilford, New Hanover, Orange, Robeson, Wake, Wilson and to the City of Durham. (1969, cc. 173, 288; 1971, c. 986; 1973, c. 183; c. 981, s. 1; c. 1330, s. 36; 1975, c. 575.)

Local Modification. — By virtue of Session Laws 1975, c. 671, the City of Durham should be stricken from the Replacement Volume.

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

Editor's Note. —

The 1975 amendment added Forsyth to the list of counties in subsection (c).

ARTICLE 8.

Habitual Offenders.

§ 20-221. "Habitual offender" defined. — An "habitual offender" shall be any person, resident or nonresident, whose record, as maintained in the office of the Division of Motor Vehicles, shows that such person has accumulated the convictions for separate and distinct offenses described in subdivisions (1), (2), or (3), of this section, committed after June 19, 1969 and within a seven-year period, provided, that where multiple convictions result from a series of offenses committed within a six-hour period, only one conviction shall be recorded for the purposes of this Article, as follows:

- (2) Twelve or more convictions of any separate and distinct offenses in the operation of a motor vehicle which are required to be reported to the Division of Motor Vehicles and the conviction whereof authorizes or

requires the Division of Motor Vehicles to suspend or revoke the privilege to operate motor vehicles on the highways of this State for a period of 30 days or more and such convictions shall include those offenses enumerated in subdivision (1) above when taken with and added to those offenses described herein.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the introductory paragraph and in two places in subdivision (2).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (2) are set out.

§ 20-222. Commissioner to certify record to superior court. — The Commissioner of Motor Vehicles shall certify, substantially in the manner provided for in G.S. 20-42 (b) three abstracts of the conviction record as maintained in his office of any person whose record appears to bring him within the definition of an habitual offender, as defined in G.S. 20-221, to the superior court district attorney of the judicial district in which such person resides according to the records of the Division of Motor Vehicles or to the superior court district attorney for the County of Wake if such person is not a resident of this State. Such abstract may be admitted as evidence as provided in G.S. 20-42 (b). Such abstract shall be competent evidence that the person named therein was duly convicted by the court wherein such conviction or holding was made of each offense shown by such abstract. (1969, c. 867; 1973, c. 47, s. 2; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the first sentence.

§ 20-225. Hearing; procedure. — The matter shall be heard at the criminal session of the court by the judge without a jury. If such person denies that he was convicted of any offense shown in the abstract and necessary for a holding that he is an habitual offender, and if the court cannot, on the evidence available to it, determine the issue, the court may require of the Division of Motor Vehicles certified copies of such records respecting the matter as it may have in its possession. If, upon an examination of such records, the court is still unable to make such determination, it shall certify the decision of such issue to the court in which such conviction was reportedly made. The court to which such certification is made shall forthwith conduct a hearing to determine such issue and send a certified copy of its final order determining such issue to the court in which the petition was filed. (1969, c. 867; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the second sentence.

§ 20-226. Court's findings; judgment. — If the court finds that such person is not the same person named in the aforesaid abstract, or that he is not an habitual offender under this Article, the proceeding shall be dismissed, but if the court finds that such person is the same person named in the abstract and that such person is an habitual offender, the court shall so find and by appropriate judgment shall direct that such person not operate a motor vehicle on the highways of the State of North Carolina and to surrender to the court all licenses or permits to operate a motor vehicle upon the highways of this State. The clerk of the court shall forthwith transmit a copy of such judgment together with any licenses or permits surrendered to the Division of Motor Vehicles. (1969, c. 867; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the end of the last sentence.

ARTICLE 9A.

Motor Vehicle Safety and Financial Responsibility Act of 1953.

§ 20-279.10. Custody, disposition and return of security; escheat.

(b) One year from the deposit of any security under the terms of this Article, the Commissioner shall notify the depositor thereof by registered mail addressed to his last known address that the depositor is entitled to a refund of the security upon giving reasonable evidence that no action at law for damages arising out of the accident in question is pending or that no judgment rendered in any such action remains unpaid. If, at the end of three years from the date of deposit, no claim therefor has been received, the Division shall notify the depositor thereof by registered mail and shall cause a notice to be posted at the courthouse door of the county in which is located the last known address of the depositor for a period of 60 days. Such notice shall contain the name of the depositor, his last known address, the date, amount and nature of the deposit, and shall state the conditions under which the deposit will be refunded. If, at the end of two years from the date of posting of such notice, no claim for the deposit has been received, the Commissioner shall certify such fact together with the facts of notice to the State Treasurer and the Treasurer shall turn such deposit over to the University of North Carolina as an escheat. (1953, c. 1300, s. 10; 1955, c. 1152, s. 13; 1967, c. 1227; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the second sentence of subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

§ 20-279.13. Suspension for nonpayment of judgment; exceptions.

Applicability of Subsection (a). — The mandatory provisions of subsection (a) are not applicable to unsatisfied judgments based on debt and/or conversion of a motor vehicle and

damages resulting therefrom. Opinion of Attorney General to Mr. Charles Hensley, 44 N.C.A.G. 250 (1975).

§ 20-279.14. Suspension to continue until judgments satisfied. — Such license and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment:

- (1) Is stayed, or
- (2) Is satisfied in full, or
- (3) Is subject to the exemptions stated in G.S. 20-279.13 or G.S. 20-279.16, or
- (4) Is barred from enforcement by the statute of limitations pursuant to G.S. 1-47,
- (5) Is discharged in bankruptcy. (1953, c. 1300, s. 14; 1969, c. 186, s. 5; 1975, c. 301.)

Editor's Note. —

The 1975 amendment, effective Oct. 1, 1975, rewrote the section, which was formerly not divided into numbered subdivisions. The only changes of substance were the deletion of "to the extent hereinafter provided" preceding "subject to the exemptions" in the provision now

contained in subdivision (3), the addition of subdivision (4), and the substitution of subdivision (5) for the former second paragraph of the section, which provided that a discharge in bankruptcy should not relieve the debtor from the requirements of this Article.

§ 20-279.21. "Motor vehicle liability policy" defined.

(b) Such owner's policy of liability insurance:

- (1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;
- (2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: fifteen thousand dollars (\$15,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, thirty thousand dollars (\$30,000) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident; and
- (3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in subsection (c) of G.S. 20-279.5, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; and provided that an insured shall be entitled to secure increased limits coverage of fifteen thousand dollars (\$15,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, thirty thousand dollars (\$30,000) because of bodily injury to or death of two or more persons in any one accident if the policy of such

insured carries liability limits of equal or greater amounts for the protection of third persons. Such provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident of five thousand dollars (\$5,000) and subject, for each insured, to an exclusion of the first one hundred dollars (\$100.00) of such damages. Such provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that such other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a *prima facie* presumption that the operator of such other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy. The coverage required under this section shall not be applicable where any insured named in the policy shall reject the coverage.

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

- a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether such pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of such notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law.
- b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in such

event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in such notice the time, date and place of such injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer such further reasonable information concerning the accident and the injury as the insurer shall request. If such forms are not so furnished within 15 days, the insured shall be deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of such injury or accident to the insurer at the address shown on the policy or after personal delivery of such notice to the insurer or its agent.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is such insurance but the insurance company writing the same denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of such bodily injury and property damage liability insurance, or the owner of such motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

- a. A motor vehicle owned by the named insured;
- b. A motor vehicle which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
- c. A motor vehicle which is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);

- d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
- e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in such motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of such motor vehicle.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

- (1) Except as hereinafter provided, the liability of the insurance carrier with respect to the insurance required by this Article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy. As to policies issued to insureds in this State under the assigned risk plan or through the North Carolina Motor Vehicle Reinsurance Facility, a default judgment taken against such an insured shall not be used as a basis for obtaining judgment against the insurer unless counsel for the plaintiff has forwarded to the insurer, or to one of its agents, by registered or certified mail with return receipt requested, or served by any other method of service provided by law, a copy of summons, complaint, or other pleadings, filed in the action. The return receipt shall, upon its return to plaintiff's counsel, be filed with the clerk of court wherein the action is pending against the insured and shall be admissible in evidence as proof of notice to the insurer. The refusal of insurer or its agent to accept delivery of the registered mail, as provided in this section, shall not affect the validity of such notice and any insurer or agent of an insurer refusing to accept such registered mail shall be charged with the knowledge of the contents of such notice. When notice has been sent to an agent of the insurer such notice shall be notice to the insurer. The word "agent" as used in this subsection shall include, but shall not be limited to, any person designated by the insurer as its agent for the service of process, any person duly licensed by the insurer in the State as insurance agent, any general agent of the company in the State of North Carolina, and any employee of the company in a managerial or other responsible position, or the North Carolina Commissioner of Insurance; provided, where the return receipt is signed by an employee of the insurer or an employee of an agent for the insurer, shall be deemed for the purposes of this subsection to have been received. The term "agent" as used in this subsection shall not include a producer of record or broker, who forwards an application for insurance to the assigned risk bureau. The Commissioner of Motor Vehicles and the North Carolina assigned risk bureau shall, upon request made, furnish to the plaintiff or his counsel the identity and address of the insurance carrier as shown upon the records of the Division or the bureau, and whether the policy is an assigned risk policy. Neither the Division of Motor Vehicles nor the assigned risk bureau shall be subject to suit by reason of a mistake

made as to the identity of the carrier and its address in response to a request made for such information.

The insurer, upon receipt of summons, complaint or other process, shall be entitled, upon its motion, to intervene in the suit against its insured as a party defendant and to defend the same in the name of its insured. In the event of such intervention by an insurer it shall become a named party defendant. The insurer shall have 30 days from the signing of the return receipt acknowledging receipt of the summons, complaint or other pleading in which to file a motion to intervene, along with any responsive pleading, whether verified or not, which it may deem necessary to protect its interest: Provided, the court having jurisdiction over the matter may, upon motion duly made, extend the time for the filing of responsive pleading or continue the trial of the matter for the purpose of affording the insurer a reasonable time in which to file responsive pleading or defend the action. If, after receiving copy of the summons, complaint or other pleading, the insurer elects not to defend the action, if coverage is in fact provided by the policy, the insurer shall be bound to the extent of its policy limits to the judgment taken by default against the insured, and noncooperation of the insured shall not be a defense.

If the plaintiff initiating an action against the insured has complied with the provisions of this subsection, then, in such event, the insurer may not cancel or annul the policy as to such liability and the defense of noncooperation shall not be available to the insurer: Provided, however, nothing in this section shall be construed as depriving an insurer of its defenses that the policy was not in force at the time in question, that the operator was not an "insured" under policy provisions, or that the policy had been lawfully canceled at the time of the accident giving rise to the cause of action.

Provided further that the provisions of this subdivision shall not apply when the insured has delivered a copy of the summons, complaint or other pleadings served on him to his insurance carrier within the time provided by law for filing answer, demurrer or other pleadings.

- (2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;
 - (3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2) of subsection (b) of this section;
 - (4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the Article shall constitute the entire contract between the parties.
- (1975, c. 326, ss. 1, 2; c. 716, s. 5; c. 866, ss. 1-4.)

I. GENERAL CONSIDERATION.

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, inserted "by registered or certified mail, return receipt requested, or" near the middle of the first sentence of paragraph (3)a of subsection (b), and substituted "by certified or registered mail with return receipt requested or served by any other method of service provided by law" for "by registered mail with return receipt requested" near the end of the second sentence of subdivision (1) of subsection (f).

The second 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in two places in subdivision (1) of subsection (f).

The third 1975 amendment added the last paragraph in subsection (b), deleted "and with respect to policies of motor vehicle liability insurance written under the North Carolina assigned risk plan" following "Except as hereinafter provided" at the beginning of subdivision (1) of subsection (f), rewrote the second sentence of that subdivision by inserting "or through the North Carolina Motor Vehicle

Reinsurance Facility" and substituting "such an insured" for "an assigned risk" near the beginning of the sentence and inserting "or certified" near the end of the sentence. The amendment also deleted "assigned risk" preceding "insurer has delivered" in the last paragraph of subdivision (1) of subsection (f).

In the second sentence of subdivision (1) of subsection (f) in the section as set out above, the editors have combined the first and third 1975 amendments by inserting "or served by any other method of service provided by law" pursuant to Session Laws 1975, c. 326, in the sentence as rewritten by Session Laws 1975, c. 866.

As the rest of the section was not changed by the amendments, only subsections (b) and (f) are set out.

II. THE OMNIBUS CLAUSE.

Who May Grant Permission. —

A person, driving only with the permission of a permittee, is not considered as using the

automobile with either the express or implied permission of the owner so as to create omnibus clause coverage. *Nationwide Mut. Ins. Co. v. Chantos*, 25 N.C. App. 482, 214 S.E.2d 438 (1975).

Where the original permittee gives the defendant express permission, this makes him a person in "lawful possession" under subdivision (b)(2). *Nationwide Mut. Ins. Co. v. Chantos*, 25 N.C. App. 482, 214 S.E.2d 438 (1975).

Permission expressly granted by the original permittee is sufficient for purposes of the statute to place the second permittee in lawful possession. *Nationwide Mut. Ins. Co. v. Chantos*, 25 N.C. App. 482, 214 S.E.2d 438 (1975).

§ 20-279.34. North Carolina Automobile Insurance Plan. — The Commissioner of Insurance shall develop a revised assigned risk plan to be denominated "The North Carolina Automobile Insurance Plan" as follows:

(7) The Commissioner of Insurance or the person designated in the plan adopted or approved by the Commissioner is empowered, after reviewing all information pertaining to the applicant or policyholder available from the records of the Division of Motor Vehicles and after determining that the applicant's license to operate a motor vehicle has been suspended and continues to be suspended or has been revoked and the revocation remains in effect:

- a. To refuse to assign an application;
- b. To approve the rejection of an application by an insurance carrier;
- c. To approve the cancellation of any motor vehicle liability insurance policy written through the plan by an insurance carrier; or
- d. To refuse to approve the renewal or the reassignment of an expiring policy.

Otherwise, nonrenewal or cancellation of insurance under the provisions of this section shall be exercised only in the event of nonpayment of premiums.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the introductory paragraph of subdivision (7).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (7) are set out.

ARTICLE 11.

Liability Insurance Required of Persons Engaged in Renting Motor Vehicles.

§ 20-283. Compliance with Article prerequisite to issuance of license plates. — No license plates shall be issued by the Division of Motor Vehicles

to operate a motor vehicle, for lease or rent for operation by the rentee or lessee, until the applicant for such license plates demonstrates to the Commissioner of Motor Vehicles that he has complied with the provisions of this Article. (1953, c. 1017, s. 3; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the beginning of the section.

ARTICLE 12.

Motor Vehicle Dealers and Manufacturers Licensing Law.

§ 20-288. Application for license; information required and considered; expiration of license; supplemental license. — (a) Application for license shall be made to the Division at such time, in such form, and contain such information as the Division shall require, and shall be accompanied by the required fee.

(b) The Division shall require in such application, or otherwise, information relating to matters set forth in G.S. 20-294 as grounds for the refusing of licenses, and to other pertinent matter commensurate with the safeguarding of the public interest, all of which shall be considered by the Division in determining the fitness of the applicant to engage in the business for which he seeks a license. (1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout subsections (a) and (b).

As subsections (c) and (d) were not changed by the amendment, they are not set out.

§ 20-290. Licenses to specify places of business; display of license and list of salesmen; advertising. — (a) The licenses of new motor vehicle dealers, used motor vehicle dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of each place of business or branch or other location occupied or to be occupied by the licensee in conducting his business as such, and the license or supplementary license issued therefor shall be conspicuously displayed on each of such premises. In the event any such location is changed, the Division shall endorse the change of location on the license, without charge.

(1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the second sentence of subsection (a).

As subsections (b) and (c) were not changed by the amendment, they are not set out.

§ 20-291. Salesman, etc., to carry license and display on request; license to name employer. — Every salesman, factory representative and distributor representative shall carry his license when engaged in his business, and shall display the same upon request. The licensee shall name his employer, and in the event of a change of employer, he shall immediately mail his license to the Division, which shall endorse such change on the license without charge. (1955, c. 1243, s. 7; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the second sentence.

§ 20-294. Grounds for denying, suspending or revoking licenses. — A license may be denied, suspended or revoked on any one or more of the following grounds:

- (2) Willful and intentional failure to comply with any provision of this Article or the willful and intentional violation of G.S. 20-52.1, 20-75, 20-82, 20-108, 20-109 or rescission and cancellation of dealer's license and dealer's plates under G.S. 20-110(e) or 20-110(f) or any lawful rule or regulation promulgated by the Division under this Article.
(1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subdivision (2).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (2) are set out.

§ 20-295. Time to act upon applications; refusal of license; notice; hearing. — The Division shall act upon all applications for a license within 30 days after receipt thereof, by either granting or refusing the same. Any applicant denied a license shall, upon his written request filed within 30 days, be given a hearing at such time and place as determined by the Commissioner, or person designated by him. All such hearings shall be public and shall be held with reasonable promptness. Any applicant denied a license for failure to comply with the definition of an established place of business, as defined in this Article, may not, nor shall anyone else apply for a license for such premises, for which a license was denied, until the expiration of 60 days from the date of the rejection of such application. (1955, c. 1243, s. 11; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for

"Department" near the beginning of the first sentence.

§ 20-296. Notice and hearing upon denial, suspension, revocation or refusal to renew license. — No license shall be suspended or revoked or denied, or renewal thereof refused, until a written notice of the complaint made has been furnished to the licensee against whom the same is directed, and a hearing thereon has been had before the Commissioner, or a person designated by him. At least 10 days' written notice of the time and place of such hearing shall be given to the licensee by registered mail to his last known address as shown on his license or other record of information in possession of the Division. At any such hearing, the licensee shall have the right to be heard personally or by counsel. After hearing, the Division shall have power to suspend, revoke or refuse to renew the license in question. Immediate notice of any such action shall be given to the licensee in the manner herein provided in the case of notices of hearing. (1955, c. 1243, s. 12; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for

"Department" in the second and fourth sentences.

§ 20-297. Inspection of records, etc. — The Division may inspect the pertinent books, records, letters and contracts of a licensee relating to any written complaint made to him against such licensee. (1955, c. 1243, s. 13; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the beginning of the section.

§ 20-300. Appeals from actions of Commissioner.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

Applied in *Smith's Cycles, Inc. v. American Honda Motor Co.*, 26 N.C. App. 76, 214 S.E.2d 785 (1975).

§ 20-305.1. Automobile dealer warranty obligations.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

§ 20-305.3. Hearing notice.

Editor's Note. — Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

ARTICLE 13.

The Vehicle Financial Responsibility Act of 1957.

§ 20-309. Financial responsibility prerequisite to registration; must be maintained throughout registration period.

(c) When it is certified that financial responsibility is a liability insurance policy, the Commissioner of Motor Vehicles may require that the owner produce records to prove the fact of such insurance, and failure to produce such records shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and the Division of Motor Vehicles shall revoke the owner's registration plate for 60 days. In no case shall any vehicle the registration of which has been revoked for failure to have financial responsibility be reregistered in the name of the registered owner, spouse, or any child of the spouse or any child of such owner, within less than 60 days after the date of receipt of the registration plate by the Division, except that a spouse living separate and apart from the registered owner may reregister such vehicle immediately in such spouse's name. As a condition precedent to the registration of the vehicle, the separated spouse shall furnish the Division his or her affidavit

and the affidavit of two other individuals stating that he or she is separated. As a condition precedent to the reregistration of the vehicle, the owner shall pay a restoration fee of fifteen dollars (\$15.00) and the appropriate fee for a new registration plate. It shall be the duty of insurance companies, upon request of the Division, to verify the accuracy of any owner's certification. Failure by an insurance company to deny coverage within 20 days may be considered by the Commissioner as acknowledgment that the information as submitted is correct.

(d) When liability insurance with regard to any motor vehicle is terminated by cancellation or failure to renew, or the owner's financial responsibility for the operation of any motor vehicle is otherwise terminated, the owner shall forthwith surrender the registration certificate and plates of the vehicle to the Division of Motor Vehicles unless financial responsibility is maintained in some other manner in compliance with this Article.

(e) Upon termination by cancellation or otherwise of an insurance policy provided in subsection (d), the insurer shall forthwith notify the North Carolina Division of Motor Vehicles of such termination. Where the insurance policy is terminated by the insured, the insurer shall forthwith notify the Division of Motor Vehicles that such insurance policy has been terminated. The Division of Motor Vehicles, upon receiving notice of cancellation or termination of an owner's financial responsibility as required by this Article, shall notify such owner of such cancellation or termination, and such owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 15 days from date of notice given by the Division, certify to the Division that he has financial responsibility effective on or prior to the date of such cancellation or termination. Failure by the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and, unless the owner's registration plate has been surrendered to the Division of Motor Vehicles by surrender to an agent or representative of the Division of Motor Vehicles and so designated by the Commissioner of Motor Vehicles or depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division of Motor Vehicles shall revoke the owner's registration plate for 60 days. In no case shall any vehicle the registration of which has been revoked for failure to have financial responsibility be registered in the name of the registered owner, spouse, or any child of the spouse or any child of such owner, within less than 60 days after the date of receipt of the registration plate by the Division, except that a spouse living separate and apart from the registered owner may reregister such vehicle immediately in such spouse's name. As a condition precedent to the registration of the vehicle, the owner shall pay a restoration fee of fifteen dollars (\$15.00) and the appropriate fee for a new registration plate. Any person, firm or corporation failing to give notice of termination as required herein shall be subject to a civil penalty of two hundred dollars (\$200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division of Motor Vehicles.

(f) The fees collected under this section and G.S. 20-311 shall be placed in the Highway Fund. (1957, c. 1393, s. 1; 1959, c. 1277, s. 1; 1963, c. 964, s. 1; 1965, c. 272; c. 1136, ss. 1, 2; 1967, c. 822, ss. 1, 2; c. 857, ss. 1, 2; 1971, c. 477, ss. 1, 2; c. 924; 1975, c. 302; c. 348, ss. 1-3; c. 716, s. 5.)

Editor's Note. —

The first 1975 amendment, effective July 1, 1975, rewrote the first sentence of subsection (e), which formerly required 15 days' notice of termination or cancellation prior to the effective date thereof, substituted "forthwith" for "immediately" near the middle of the second

sentence of subsection (e), substituted "registered" for "reregistered" in the fifth sentence and "registration" for "reregistration" in the sixth sentence of subsection (e) and added the last sentence of subsection (e).

The second 1975 amendment, effective July 1, 1975, inserted "a restoration fee of fifteen

dollars (\$15.00) and" in the fourth sentence of subsection (c) and in the next-to-last sentence of subsection (e) and added subsection (f).

The third 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout subsections (c), (d) and (e).

As the rest of the section was not changed by the amendments, only subsections (c), (d), (e) and (f) are set out.

§ 20-311. Revocation of registration when financial responsibility not in effect. — The Division of Motor Vehicles, upon receipt of evidence that financial responsibility for the operation of any motor vehicle registered or required to be registered in this State is not or was not in effect at the time of operation or certification that insurance was in effect, shall revoke the owner's registration plate issued for the vehicle at the time of operation or certification that insurance was in effect or the current registration plate for the vehicle if the year registration has changed for 60 days. In no case shall any vehicle the registration of which has been revoked for failure to have financial responsibility be reregistered in the name of such owner, spouse or any child of the spouse or any child of such owner within less than 60 days after the registration plates have been surrendered to the Division except that a spouse living separate and apart from the registered owner may reregister such vehicle immediately in such spouse's name. As a condition precedent to the reregistration of the vehicle the owner shall pay a restoration fee of fifteen dollars (\$15.00) and the appropriate fee for a new registration plate. (1957, c. 1393, s. 3; 1959, c. 1277, s. 2; 1963, c. 964, s. 4; 1965, c. 205; c. 1136, s. 3; 1967, c. 822, s. 3; c. 857, s. 4; 1971, c. 477, s. 3; 1975, c. 348, s. 4; c. 716, s. 5.)

Editor's Note. — The first 1975 amendment, effective July 1, 1975, inserted "a restoration fee of fifteen dollars (\$15.00) and" in the last sentence.

The second 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the first and second sentences.

§ 20-312. Failure of owner to deliver certificate of registration and plates after revocation. — Failure of an owner to deliver the certificate of registration and registration plates issued by the Division of Motor Vehicles, after revocation thereof as provided in this Article, shall constitute a misdemeanor. (1957, c. 1393, s. 4; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the middle of the section.

§ 20-313. Operation of motor vehicle without financial responsibility a misdemeanor.

(b) Evidence that the owner of a motor vehicle registered or required to be registered in this State has operated or permitted such motor vehicle to be operated in this State, coupled with proof of records of the Division of Motor Vehicles indicating that the owner did not have financial responsibility applicable to the operation of the motor vehicle in the manner certified by him for purposes of G.S. 20-309, shall be prima facie evidence that such owner did at the time and place alleged operate or permit such motor vehicle to be operated without having in full force and effect the financial responsibility required by the provisions of this Article. (1957, c. 1393, s. 5; 1959, c. 1277, s. 3; 1963, c. 964, s. 5; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

§ 20-313.1. Making false certification or giving false information a misdemeanor.

(b) Any person, firm, or corporation giving false information to the Division concerning another's financial responsibility for the operation of a motor vehicle registered or required to be registered in this State, knowing or having reason to believe that such information is false, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1963, c. 964, s. 6; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

§ 20-316. Divisional hearings upon lapse of liability insurance coverage. — Any person whose registration plate has been revoked under G.S. 20-309(e) or 20-311 may request a hearing. Upon receipt of such request, the Division shall, as early as practical, afford him an opportunity for hearing. Upon such hearing the duly authorized agents of the Division may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and documents. If it appears that continuous financial responsibility existed for the vehicle involved, or if it appears the lapse of financial responsibility is not reasonably attributable to the neglect or fault of the person whose registration plate was revoked, the Division shall withdraw its order of revocation and such person may retain the registration plate. Otherwise, the order of revocation shall be affirmed and the registration plate surrendered. (1971, c. 1218, s. 1; 1973, c. 1144, ss. 1, 2; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-316.1. Notification of Division of renewal or reinstatement of policy. — Whenever any insurance company writing automobile liability insurance within this State shall, pursuant to the laws of this State, notify the North Carolina Division of Motor Vehicles of the cancellation or termination of any automobile liability insurance policy, and such company shall subsequently reinstate or renew such policy, it shall become the duty of the insurance company renewing or reinstating the policy to immediately notify the North Carolina Division of Motor Vehicles of the renewal or reinstatement. Notification of the renewal or reinstatement shall constitute proof of continuous coverage to the North Carolina Division of Motor Vehicles, provided such reinstatement or renewal has occurred without any lapse [in] coverage. (1973, c. 1069, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" throughout the section.

§ 20-317. Insurance required by any other law; certain operators not affected. — This Article shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this Article, may be certified as proof of financial responsibility under this Article; provided, however, that nothing contained in this Article shall affect operators of motor vehicles that are now or hereafter required to furnish evidence of insurance or financial responsibility to the North Carolina Utilities Commission or the Interstate Commerce Commission or both, but to the extent that any insurance policy, bond or other agreement filed with or certified to the North Carolina Utilities Commission or Interstate Commerce Commission as evidence of financial responsibility affords less protection to the public than the financial responsibility required to be certified to the Division of Motor Vehicles under this Article as a condition precedent to registration of motor vehicles, the amounts, provisions and terms of such policy, bond or other agreement so certified shall be deemed to be modified to conform to the financial responsibility required to be proved under this Article as a condition precedent to registration of motor vehicles in this State. It is the intention of this section to require owners of self-propelled motor vehicles registered in this State and operated under permits from the North Carolina Utilities Commission or the Interstate Commerce Commission to show and maintain proof of financial responsibility which is at least equal to the proof of financial responsibility required of other owners of self-propelled motor vehicles registered in this State. (1957, c. 1393, s. 9; 1959, c. 1252, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" in the first sentence.

ARTICLE 13A.

Certification of Automobile Insurance Coverage by Insurance Companies.

§ 20-319.1. Company to forward certification within seven days after receipt of request. — Upon the receipt by an insurance company at its home office of a registered letter from an insured requesting that it certify to the North Carolina Division of Motor Vehicles whether or not a previously issued policy of automobile liability insurance was in full force and effect on a designated day, it shall be the duty of such insurance company to forward such certification within seven days. (1967, c. 908, s. 1; 1975, c. 716, s. 5.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department" near the middle of the section.

ARTICLE 14.

Driver Training School Licensing Law.

§ 20-321. Enforcement of Article by Commissioner.

Editor's Note. —
Session Laws 1975, c. 69, s. 4, amends Session
Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975,
to Feb. 1, 1976.

§ 20-328. **Administration of Article.** — This Article shall be administered by the Division of Motor Vehicles with no additional appropriations. (1965, c. 873; 1973, c. 440; 1975, c. 716, s. 5.)

Editor's Note. —

The 1975 amendment, effective July 1, 1975, substituted "Division" for "Department."

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1975

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1975 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN

Attorney General of North Carolina

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